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U.S. Congress. Senate.

Promotion of trade in China

Washington

1921

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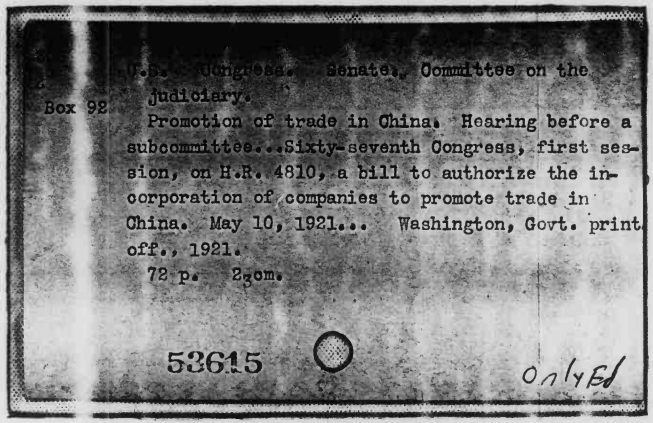

Box 92

U.S. Congress. Senate. Committee on the Judiciary.
Promotion of trade in China. Hearing before a subcommittee...Sixty-seventh Congress, first session, on H.R. 4810, a bill to authorize the incorporation of companies to promote trade in China. May 10, 1921... Washington, Govt. print. off., 1921.
72 p. 23cm.

53615

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TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 10:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 2-28-97 INITIALS: MS

TRACKING #: 22062

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PROMOTION OF TRADE IN CHINA

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HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

SIXTY-SEVENTH CONGRESS
FIRST SESSION

ON

H. R. 4810

A BILL TO AUTHORIZE THE INCORPORATION OF COMPANIES TO PROMOTE TRADE IN CHINA

MAY 10, 1921

Printed for the use of the Committee on the Judiciary

WASHINGTON
GOVERNMENT PRINTING OFFICE
1921

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PROMOTION OF TRADE IN CHINA.

TUESDAY, MAY 10, 1921.

UNITED STATES SENATE,
SUBCOMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met pursuant to call at 3 o'clock p. m. in the room of the Committee on Interstate Commerce, Capitol, Senator Cummins (chairman of the subcommittee) presiding.

Present: Senators Cummins, Brandegee, and Walsh of Montana, members of the subcommittee.

Present also: Senators Chamberlain and Jones of Washington, and Representative Dyer of Missouri.

Present also: The Secretary of Commerce, Hon. Herbert Hoover, and Mr. John Van A. MacMurray, Chief of Division of Far Eastern Affairs, Department of State.

The subcommittee then proceeded to the consideration of H. R. 4810, title of which is as follows: "An act to authorize the incorporation of companies to promote trade in China."

Senator CUMMINS. The subcommittee will be in order. The subcommittee has met to hear further upon the bill introduced by the Senator from Washington, Mr. Jones, and the House bill introduced by Mr. Dyer, which has passed the House and is now before our Committee on the Judiciary. The hearing will so far as possible be in continuation of a hearing held upon a similar bill on the 25th of February, 1921, and while we can not expect that there will not be some duplication I hope it will be reduced to its minimum.

Senator Jones, we look upon you as having this matter in charge. Whom will you have called before us?

STATEMENT OF HON. WESLEY L. JONES, UNITED STATES SENATOR FROM THE STATE OF WASHINGTON.

Senator JONES. Mr. Chairman, I want to ask first that you really consider H. R. 4810, as that bill covers the same subject as the one I introduced, and that bill having passed the House I will ask the committee to consider it.

The CHAIRMAN. Yes; the committee will act upon the House bill rather than upon the Senate bill, because that will bring the matter to an end.

Senator JONES. Mr. Chairman, I shall have to leave in just a moment, and I am not going to discuss the bill, because there are others here who will take up the different phases of it. Mr. MacMurray, of the State Department, is here, and I suggest that he be heard first. Mr. Powell and Senator Chamberlain will arrange about the order in which the other witnesses will appear, unless the committee has some special desire. I suggest that you hear Mr. MacMurray.

Senator CUMMINS. I hope all the witnesses will remember that our time is somewhat limited, and while we want to hear everything that is material we hope it will be compressed as much as possible.

Senator JONES. I think that will be done.

STATEMENT OF MR. JOHN VAN A. MacMURRAY, CHIEF OF DIVISION OF FAR EASTERN AFFAIRS, DEPARTMENT OF STATE.

The CHAIRMAN. We will assume, Mr. MacMurray, that you have something to say upon this subject, and if you will just discuss it in your own way we will be glad to hear you.

Mr. MACMURRAY. Mr. Chairman, I confess to not having followed this matter before, and I do not know upon just what points you wish to touch, but may I present it as it appears to one who was connected with the legation in China for some time and who felt very constantly and pressingly the need of some sort of legislation which would be uniform and easily ascertainable and would enable American firms to do business there in the same way that a good many competing national firms do.

Of course, the fundamental fact about it all is that in China we enjoy extra-territorial rights by treaty. That means that our citizens and our corporations are wholly and completely subject to American jurisdiction and amenable only to American law. In order to carry on in China at all a juristic person must incorporate itself under some kind of American law, unless it is to forego that protection that we have by treaty and put itself under a foreign flag—Chinese, British, Japanese, or whatever it may be.

The only American laws under which they could incorporate have been those of the respective States. More recently the United States Court for China has held that an Alaska statute in regard to incorporation would serve the purpose. The decision of the court in Shanghai has never been brought judicially into question; it is the fact, however, that in the minds of a good many Americans who are interested in business there there is, frankly, a doubt whether that ruling of the court would be sustained on appeal.

Senator WALSH. What is the ruling you refer to?

Mr. MACMURRAY. That a certain Alaska statute is applicable to the China jurisdiction. There has therefore been considerable hesitation on the part of Americans wishing to incorporate for China purposes about putting themselves under that Alaska statute, for fear that it might be declared not applicable.

Senator CUMMINS. Why Alaska, rather than one of the States?

Mr. MACMURRAY. Because the Alaska law was a Federal law. The laws which the Revised Statutes make applicable to the Chinese jurisdiction are, first of all, the statutes of the United States. For that reason, the court held that a territorial law enacted by the Federal Government would apply.

Senator CUMMINS. Do you mean that a corporation organized under one of the States to do business in China would not be entitled to the jurisdiction of the United States Court for China?

Mr. MACMURRAY. Pardon me, Senator; I am afraid I misunderstand your question. It would, of course. But the effect of the court's decision was to create the Alaska law as the nearest thing to a Federal law that we have.

Senator CUMMINS. That is a psychological matter rather than a legal matter.

Mr. MACMURRAY. It is really psychological, of course. It is really open to anyone to incorporate under the laws of Delaware or New York or any other State.

Senator WALSH. Was some disposition shown to incorporate under the Alaska statutes?

Mr. MACMURRAY. No. As I say, Senator, the feeling was one of doubt as to whether that decision of the court might not be overruled.

Senator WALSH. What I mean is, is there a feeling there that if the Alaska statute would authorize the organization of a corporation to do business there—that is to say, if it would be convenient—would there be a disposition to incorporate under the Alaska statute?

Mr. MACMURRAY. I think probably there would be.

Senator WALSH. Because the foundation is the Federal statute rather than some State statute?

Mr. MACMURRAY. Yes; and the court in applying that statute held that registration might actually be accomplished in China. That is the great point of convenience about the Alaska statute.

Senator WALSH. I do not understand what you mean by registration.

Mr. MACMURRAY. The registration of the corporation—the formalities attending it. The Alaska law required certain formalities, the registration of the articles of incorporation, and provided that it should be done—I have forgotten the exact terms of the statute, but I think with the secretary of state of the Territory, for which purpose the United States Court for China held that the legation would be the equivalent in applying that statute to the China jurisdiction. You see, it was carrying that over by analogy into the China jurisdiction.

Senator WALSH. I do not understand that at all. I understand there is a statute of the United States providing for the organization of corporations in Alaska?

Mr. MACMURRAY. Yes.

Senator WALSH. The corporation would be created in Alaska by filing its articles of incorporation with the secretary of the Territory of Alaska?

Mr. MACMURRAY. Yes, sir.

Senator WALSH. Now, I do not see what the legation has to do with that.

Mr. MACMURRAY. May I read a portion of an abstract of the decision? [Reading:]

"In the case of the United States *v.* Paul McRae, acting clerk of the United States Court for China, respondent (case No. 586, filed June 9, 1917), the United States Court for China held the corporation act of March 2, 1903 (for Alaska), to be applicable to China. The basis upon which this act was held by the court to be so applicable was: (1) That the laws of the United States have been extended to China by the acts of Congress of 1848 and 1860, and could be withdrawn only by a similar act. (2) That the act of 1903 appears to be suitable to conditions in China and necessary to execute the treaties, and consequently is extended here by the affirmative acts of 1848 and 1860. The court further pointed out the following rules for such application of the act of 1903: (*a*) The requirements of that act that proposed articles of incorporation be filed 'in the office of the secretary' are sufficiently complied with by filing them with the legation, and (*b*) the further requirement that such articles be filed in the office of the clerk of the district court is met by filing them with the clerk of the United States Court for China."

Senator WALSH. Then, as I understand it, the court found that because there is a statute of the United States providing for the organization of corporations in Alaska by filing the articles of incorporation with the Secretary of the Territory of Alaska and filing them with the district court, they may organize corporations in China by filing the articles of incorporation with the legation and with the clerk of the United States court there?

Mr. MACMURRAY. Yes, sir.

Senator CHAMBERLAIN. Is not that analogous to the British order in council, or the British act, which requires certain corporations to file their articles with the registrar?

Mr. MACMURRAY. Of course, the British order in council is an absolute regulation; it is a statutory act. This is an interpretation of a statutory act. The two, of course, follow along parallel lines.

Senator CUMMINS. Let me see if I now fully understand it. A corporation organized in any one of the States to do business in China would have a right to go to the United States court there for the adjudication of its privileges and immunities, what ever it may have been granted in its article of incorporation? That is true, is it not?

Mr. MACMURRAY. Yes, sir.

Senator CUMMINS. And the court has held that a corporation organized in China under the laws of Alaska is also entitled to these rights and privileges, and the reason that those people operating in China would rather go to the Alaskan statute than to the laws of any of the States is that it is supposed that a corporation organized under the laws of Alaska is a little nearer to the United States than a corporation organized under the laws of any of the States? Is that about the situation?

Mr. MACMURRAY. Yes; and it is the fact, Senator, that it can be organized legally in China without coming home to obtain registration.

The Alaska provision as extended to the China jurisdiction would probably be the most convenient arrangement that now exists under American law for incorporation there, but there is that considerable doubt in the minds of the people in China whether on appeal of some case it might not be held by other courts that the Alaska statute is not applicable by analogy to the China jurisdiction. That means, as an alternative to going under a foreign flag and relying upon foreign protection in China, that Americans desiring to incorporate in China must operate with a State charter. That in itself entitles them to full protection as an American corporation without regard to what State they have incorporated in.

The inadequacy of that is probably largely psychological. It is primarily due to the fact that almost nobody in China has any knowledge of what a Delaware, an Arkansas, or an Indiana corporation may be. The Chinese particularly have no knowledge and no means of obtaining knowledge. I should, perhaps, point out what seems the trivial fact that there is nobody over there in China, except one or two law firms, that have even an encyclopedia of law from which to ascertain what the corporation law in a particular State is. The

whole matter is in China on a different basis from what it is here, where it is easy to consult counsel and find out what the terms of the statute are, and what decisions there are on the laws of incorporation in certain States. Over there, because of the comparative fewness of Americans and the fact that there are only a small number of law offices, it is almost impossible for anyhody to know or expect to know what the incorporation law of any American State may be. That has a very direct effect upon the minds of the Chinese, whose cooperation is desirable. They have a feeling that they do not know what law will apply when they put their money in.

Senator CUMMINS. Is that lack of cooperation seen in the disinclination of the Chinese to enter a corporation of this character and contribute a part of its capital, or is it seen in the disinclination to deal with an American corporation organized under the laws of a State?

Mr. MACMURRAY. The former; although where the question has been raised, as sometimes the question is raised, as to the character of the corporation, that other question enters into it, of course. There would perhaps be somewhat less confidence in dealing with a corporation whose legal basis they were unfamiliar with.

Senator CUMMINS. They, your conclusion is, I take it, that it would be very desirable in doing business in China—purely local business—that so far as Americans participate it it, it should be done under a Federal incorporation?

Mr. MACMURRAY. Yes, sir; so it seems to me, Senator. And I might add there is another reason. As is known, of course, there are certain of the State corporation laws which are exceedingly lax. That is not so very serious here at home, because every corporation does business more or less in the open and there is always the eye of the public on it. Over there that is not the case. The American community that is interested in it is so small and the operations carried on over there are so far away from general observation that a corporation operating under a very lax set of laws is in a position, if it is unscrupulous, to do a great many things that would not be possible here, tending to bring discredit on it.

Senator CUMMINS. You represent the State Department here at th's hearing, do you not?

Mr. MACMURRAY. Yes, sir.

Senator CUMMINS. One of the points that has heen suggested several times with regard to this bill is this. Suppose that a corporation is organized to do business in China under the act here proposed. Let us assune that 51 per cent of its stock is subscribed by Americans and 49 per cent of its stock is subscribed by Chinese. It goes on to do business, any kind of buiness that it may choose to do. There is quite an elaborate system of supervision provided for in the bill on the part of the Government of the United States. Suppose that the corporation fails and the stockholders lose their money, or would under ordinary circumstances lose their money. What would be the attitude of China and Chinamen toward the Government of the United States if they, in common with their American fellow stockholders, were compelled to lose their money in any enterprise which a corporation of this sort might engage in? Would it be likely to create international disturbances, and would it not be probable that they would expect the Government of the United States to make good the losses which the Chinese stockholders might sustain?

Mr. MACMURRAY. No; I do not think so, Senator. I think they would not feel that the Government of the United States was in any degree more responsible than if this had been, for example, a Delaware corporation rather than a Federal corporation.

Senator WALSH. Apparently then, they would feel a greater security, because of the greater supervision, the more accurate supervision by the United States Government over corporate affairs than by the State of Delaware over a Delaware corporation?

Mr. MACMURRAY. Yes; they would have greater confidence.

Senator WALSH. This bill provides for such supervision, and it provides for the revoking of the articles by the Secretary:

"The Secretary of Commerce may suspend the charter of a corporation whenever, with or without examination as provided in section 15, he becomes satisfied that the business and affairs of the corporation are conducted or have been conducted within the year last preceding in a manner (1) contrary to the provisions of this act or any other law or treaty of the United States, or of the articles of incorporation or by-laws of the corporation, or (2) detrimental to the business interests and good will of the United States."

Would you think that a Chinaman would be willing to subscribe to stock in a corporation under an act of that character, giving the Secretary of Commerce the power to suspend the corporation, practically to put it out of business, at any time that he thought the business was conducted in such a way that it was not to the best interests of the United States?

Mr. MACMURRAY. I think they would have no hesitation about that.

Senator WALSH. Well, if they are apprehensive about this matter at all, about the future of the corporation, it would seem to me that that would scare them to death.

Senator CHAMBERLAIN. Is it not true that that portion of that particular bill was drafted very much along the lines of the British Order in Council? Does not the registrar exercise very much the same power that is undertaken to be given to the Secretary here?

Mr. MACMURRAY. I think it is virtually identical.

Senator WALSH. I do not mean to say that it is not, but when we are told that they are apprehensive about the lack of supervision by a State organization, it would seem to me that they would be frightened to death with this thing.

Representative DYER. Senator, if you will permit me to make the suggestion, that same section that you are reading from provides that such suspension shall not take effect until after the Secretary has filed suit in the United States Court for China and hearing had, and it would be for the court to decide whether the charter should be revoked or not.

Senator WALSH. It does not make a bit of difference. The court is not going to find that the law has been violated in any respect, nor that the corporation has conducted its business in any manner that is not to the best interests of the corporation or of the stockholders, but whenever the court finds that it is detrimental to the best interests of the United States that that corporation should continue business it goes out.

Senator CHAMBERLAIN. I would like to make this suggestion. As I have said, my recollection is that that provision is substantially what the British law requires and the British reserve that same right, in order to prevent companies incorporated under the British law from indulging in a business which would be deterimental not only to the British Empire itself but to the people of China as well. For instance, in the sale of opium, corporations organized to carry on an illegitimate or illegal traffic; the purpose of it is to prevent corporations from engaging in that kind of business.

Senator WALSH. I have not the slightest doubt in the world, Senator, that the purpose is highly commendable, but the power is unlimited. What guide is there? Is it not a matter of pure opinion on the part of the Secretary of Commerce that the way the business is being conducted is detrimental to the business interests of the United States? What rule is going to guide him in determining whether it is detrimental to the business interests? Congress, of course, being a legislative body, might say that a certain thing is detrimental to the business interests of the United States, but when you leave it to the Secretary of Commerce you leave it to the individual opinion of one man. He decides that it is, and then it goes up to a judge out in China to determine whether the operations of a certain corporation are detrimental to the business interests of the United States. You can appreciate, Senator Chamberlain, that it is not a judicial question to start with. It is a purely political question and a political power which you are conferring upon the court.

Senator BRANDEGEE. Mr. MacMurray, what is your position in the State Department? What office do you hold?

Mr. MACMURRAY. Chief of the Far Eastern Division.

Senator BRANDEGEE. Have you ever lived in China?

Mr. MACMURRAY. Yes, sir.

Senator BRANDEGEE. How long?

Mr. MACMURRAY. About five years.

Senator BRANDEGEE. How long ago?

Mr. MACMURRAY. The last time I was there was two years ago.

Senator BRANDEGEE. Did you engage in any business?

Mr. MACMURRAY. No; I was secretary of the legation.

Senator CUMMINS. Senator Chamberlain, following the suggestion of Senator Walsh, you would not be very insistent upon putting that sort of provision in a charter of a corporation, would you? You would have the widest differences of opinion in Congress as to what is detrimental to the business interests of

the United States. I can hardly imagine submitting a question of that kind to the court.

Senator CHAMBERLAIN. I think the same result might be obtained by changing the phraseology of the bill, but I can see very readily that the purpose of such a provision is to vest in some authority here such power that when a corporation was doing something that would practically destroy our business relations with China its charter might be revoked.

Senator CUMMINS. The corporation ought to be so limited in its fundamental law or in its articles of incorporation that it must pursue a lawful business, of course, and if it pursues a lawful business in a lawful way I can hardly think that it ought to be dissolved because it might be doing something that somebody thought was detrimental to the business interests of this country.

Senator BRANDEGEE. Mr. MacMurray, have you carefully studied the provisions of this bill?

Mr. MACMURRAY. Rather carefully; yes.

Senator BRANDEGEE. Do you appear here at the request of the Secretary of State?

Mr. MACMURRAY. No; at the request of Senator Cummins.

Senator CUMMINS. I will say that Senator Jones submitted to me the names of two officers, one in the office of the Secretary of State and one in the office of the Secretary of Commerce, and I communicated with them. I did not know the etiquette of the matter, and so I wrote originally to the two gentlemen whose names were given me. Mr. MacMurray was one of them. I was reminded promptly by the office of the Secretary of State that if I wanted anybody from that office I must communicate with the Secretary himself and have him detail the proper man. So I corrected my mistake as quickly as possible.

Senator BRANDEGEE. What I wanted to ask Mr. MacMurray was, after such study as he has given this bill, whether he advocated it as it stands, whether he approved of it, and whether he was representing his own personal opinion about it or the attitude of the Department of State, and also whether he has given any consideration to the constitutional power of Congress to pass the bill as it stands.

Mr. MACMURRAY. The State Department does approve of, at any rate, the general purpose of the bill. There are certain details in the bill as to which the Department of State would be quite indifferent how they were arranged, but the general purpose of the bill meets its full approval.

Senator BRANDEGEE. When you speak of the Department of State do you mean Secretary Hughes?

Mr. MACMURRAY. Yes.

Senator BRANDEGEE. He has read it and studied it?

Mr. MACMURRAY. The matter has been before him and he has, in fact, written to Mr. Dyer—I think his letter was addressed to Mr. Dyer—expressing his approval.

Senator BRANDEGEE. Does he in his letter express his views as to the constitutional power of Congress to pass the bill?

Mr. MACMURRAY. I think that is not contained in his letter.

Senator WALSH. Would you have the kindness to read it to us?

Mr .MACMURRAY (reading):

"I have the honor to acknowledge the receipt of your letter of March 9, 1921, in which you request my views regarding the bill (H. R. 16043) to authorize the formation of corporations to promote trade in China, which passed the House of Representatives on February 21 last.

"I beg to state that the department has for some time advocated the enactment of Federal legislation which would regularize the formation of corporations in China, and is in sympathy with the general provisions of your bill. However, in view of the department's special responsibilities under the treaties with China and other powers in connection with the activities of American citizens and American relations in China, I feel that it might be well if this department should have a voice in the preparation of any regulations which may be promulgated for the purpose of carrying out the provisions of the proposed act."

I should add that the bill which you have before you to-day does contain an amendment in accordance with that suggestion. The remainder of the letter relates to that suggestion that the Department of Commerce and the Department of State jointly should frame the regulations. Perhaps I need not read that.

Senator BRANDEGEE. No; I do not care anything about the regulations that they are to make, but I do not see that that touches the question at all as to whether Congress has the power to pass this bill or not.

Mr. MACMURRAY. Might I on that question refer to Mr. Hackworth, of the solicitor's office of our department?

Senator BRANDEGEE. To whom was that letter addressed?

Mr. MACMURRAY. That was addressed to Representative Dyer in response to an inquiry from him.

Representative DYER. I will say, Senator, if I may be permitted, that I took the matter up personally with the Secretary of State at two conferences and went over the bill with him, and he afterwards wrote the letter which Mr. MacMurray has read.

Senator BRANDEGEE. Did you ask him whether he thought Congress had the power to pass this act or not?

Representative DYER. I did not ask him that, Senator.

Senator BRANDEGEE. Did he raise that question at all?

Representative DYER. He did not; he did not refer to it, and I of course did not feel that it was proper for me to do so. He is a much better lawyer than I am.

Mr. MACMURRAY. I may say it was pointed out to the Secretary that a constitutional question had been raised before he signed that letter.

Senator BRANDEGEE. All he says in the letter, if I have followed it, is that it is very desirable to do something that will promote our trade with China, with which I am in hearty accord. The question is, Have we the power to pass this bill?

Mr. MACMURRAY. He is a little more definite than that.

Senator BRANDEGEE. Let us see it again, then.

Mr. MACMURRAY. He says, "the department has for some time advocated the enactment of Federal legislation which would regularize the formation of corporations in China and is in sympathy with the general provisions of your bill."

Senator BRANDEGEE. I am in sympathy with it, too, but I wondered if the court would declare it to be void if we passed the bill as exceeding the constitutional power of Congress. The question as it lies in my mind is this, under the commerce clause of the Constitution, upon which I suppose you are basing this measure, Congress has power to regulate commerce with foreign nations. The inquiry arises in the minds of all of us, I think, whether a general incorporation act by which companies may be incorporated by filing an application with the Secretary of Commerce to do business wholly in China—whether that is commerce with foreign nations. If there is anybody here that can throw any light on that, that is something that I would like to know about.

Representative DYER. The same principle is involved, Senator, as in the Edge Act.

Senator BRANDEGEE. Yes; but I want some lawyer to show me that the commerce clause of the Constitution authorizes us to pass a general incorporation act by which companies may incorporate themselves to do business wholly within China.

Senator WALSH. Mr. Dyer, I would like to inquire about that. My understanding of the Edge Act is that it provides for corporations to be organized here for the purpose of carrying on an export trade; that is to say, carrying on the transference of merchandise from this country over to another country. Obviously, that is commerce with a foreign country, and if this corporation were organized for the purpose of promoting the exportation of goods from this country to China and the importation of goods from China to this country, it would unquestionably be a regulation of foreign commerce. But that, Mr. Dyer, is not the purpose of the act at all; the purpose of the act is to organize corporations that will set themselves up in China and do business in China between Chinamen.

Representative DYER. But, mark you, it is for American goods in China.

Senator BRANDEGEE. Is there any proponent of this bill that has an attorney here who is prepared to discuss that feature of the bill?

Senator CHAMBERLAIN. I think the Solicitor from the State Department might discuss that.

Mr. MACMURRAY. Might I suggest Mr. Hackworth?

Senator CUMMINS. We will call him presently. Have you finished?

Mr. MACMURRAY. May I go back to the question which was asked in regard to the suspicion with which Chinese would regard this power of the Secretary of Commerce to suspend? I will confine myself simply to that portion of the question, because I do not feel warranted in speaking about whether it is too large a power, from the point of view of American constitutional law, to put into the hands of an administrative officer.

I think that the Chinese would have absolute confidence in the integrity and fair dealing of an American administrative officer who might have to decide such a question. They would, I think, feel no hesitation whatever in investing their money in any company in which an American Federal official had that authority.

Senator WALSH. But you have not grasped the point that I make. He may suspend this charter when he thinks that it interferes with the business interests of the United States. You see, the two are in antagonism. These stockholders with their money in it will, of course, take the position that it does not injuriously affect the business interests of the United States. The Secretary of Commerce is primarily looking after the interests of the United States and not the interests of the Chinamen who have got their money invested in this enterprise. And the question I put to you is whether a Chinaman, however great his confidence may be in the justness and fairness of the United States, would submit that question to the judgment of an official of the United States, whose interest is opposed to their interest and whose duty is not to take care of them but to take care of the United States. In other words, they are submitting their case, are they not, to a judge who is, by his position, biased against them?

Senator CHAMBERLAIN. Under the practice over there it would be submitted to a citizen of the United States anyway, either to a consul or to an officer of the United States Court for China—in any event.

Senator WALSH. He would have an appeal to the United States judge from the Secretary of Commerce, each of whom is to determine not what his interests are but what are the interests of the United States, whether the corporation should be permitted to go on or not.

Senator CUMMINS. Primarily it is not a judicial question and can not be made a judicial question; it may be an administrative question. There are instances in our statutes in which such a matter has been left to the adjudication of an administrative officer, but never to the administration of a judicial officer.

Senator BRANDEGEE. Of course there is that other provision there. It is not only "contrary to the interests of the United States" but "detrimental to the business interests and good will of the United States." It is the idea of giving to anybody the right to revoke the charter of a corporation because in his opinion it is detrimental to the good will of the United States. It is a meaningless phrase.

Mr. MACMURRAY. I suppose that was probably put in, Senator, to provide for the control of newspapers.

Senator BRANDEGEE. It would mean, of course, that if the Secretary of Commerce thought this corporation was creating international friction between China and us he could revoke the charter or suspend it.

Senator WALSH. That is a very interesting suggestion you make there. This act will authorize the incorporation of a newspaper company, a newspaper run by Americans over in China. When the Secretary of Commerce thinks that that newspaper, in the way it is being conducted, is detrimental to the business interests and good will of the United States he can suspend it.

Senator BRANDEGEE. I do not know whether Chinamen are more confiding than Yankees, but I can not imagine a Connecticut company being absolutely at the whim of some official to cancel its charter, and I think the Chinamen are pretty acute business men. I think that after one dose of this remedy, if one company lost its money, or the stockholders did, because the Secretary canceled their charter, they would sit up and take notice.

Senator WALSH. We had a statute which was interpreted as giving the Secretary of the Interior under certain conditions power to revoke a license for a water-power company operating within forest reservations, and just as soon as he exercised that power nobody would put a dollar into a water-power company operating in that way. For 10 years all water-power development in the western country was held up, until we passed a law taking that power away from him.

Senator CUMMINS. It was this matter I had in mind when I spoke before—the possibility of an international complication or difficulty. Suppose the Chinamen came in and put up 49 per cent of the capital of the corporation organized under this act, and that corporation was then suspended or dissolved because its business was contrary to the interests of the United States, and these Chinamen should lose their money. Don't you think they would have a pretty good claim against the United States for the money they invested and lost in that kind of business?

Mr. MACMURRAY. It would seem to me, Senator, they would have a good claim only in case the action of the administrative officer had been arbitrary and unjust.

Senator BRANDEGEE. But who is going to decide that? Of course, the officer himself thinks he is very just; he is doing it in the exercise of his best judgment, in the interest of the United States. But where the interests of the Chinese conflict with the interests of the United States, this bill compels the Secretary of Commerce to look exclusively to the interests of the United States, irrespective of the Chinese stockholders. That is his duty. Now, after the Chinaman loses his money in that sort of situation, there is no doubt in my opinion that in all good conscience and equitably and morally the Government would have to reimburse the Chinamen for the damage done by the Secretary when he ruined the company.

Senator WALSH. Would you not think so, Mr. MacMurray? Suppose that was the situation. The interest of the Chinese stockholder is that the company should keep on doing business, but the interest of the United States, as found by the Secretary, is that it should not. He accordingly suspends the charter, and the judge confirms the judgment. That is done in order to promote the business interests of the United States, or to prevent the business interests of the United States from suffering. Would not the Chinaman go to his Government, and would not the Chinese Government immediately protest and demand, if it was done merely to promote the business interests of the United States, that the business interests of the United States ought to make the Chinaman whole?

Suppose the situation were reversed and China had a law of this character. Would not the American citizens come to our Government and say, "This is a perfectly arbitrary confiscation of our property, and you ought to make the Chinese Government pay us. It was not done for any reason except to promote the business interests of China."

Mr. MACMURRAY. I should think that the investment of money in a company with such a charter would be an acceptance in advance of what the decision might be.

Senator WALSH. You are right about that.

Senator BRANDEGEE. Let me ask you this. Do you know who was promoting this legislation? Were there any particular people or companies that wanted this bill passed, that you know of, or is it spontaneously the State Department or the Department of Commerce and the various governmental departments?

Mr. MACMURRAY. It began rather spontaneously over in China. As I recall it, it was the summer of 1918 that the thing became acute. My recollection of the particular thing that brought it to attention is that it was the establishment in Shanghai of a company, composed quite exclusively of foreigners, which had found a means of incorporating under one of the American State laws. It was a manifest scandal. The matter was reported to the State Department, which ruled that it was not entitled to American protection, inasmuch as there was no substantial bona fide American interest involved. But the situation was a manifestly awkward one.

Senator BRANDEGEE. I understand perfectly well that a company chartered by one of the American States might not have a very good standing in the Orient. I can understand that, but what I want to know is what these people who are backing this bill want to do. If they want to be incorporated as corporations to do business exclusively inside of China, that is one thing. If they want to be a corporation to do business inside of China and also do an export and import business between China and the United States, that is another thing. There does not appear to be anybody here—at least I have not seen them or heard them—that can tell me exactly what is contemplated to be done under this act.

Mr. MACMURRAY. I think both those things are contemplated.

Senator BRANDEGEE. Of course, you do not intend to go into business under this act, do you, or to make an incorporation? Somebody does, and I wonder if there is anybody that can be dragged out here who will just say what he wants to do when he forms a company under this act.

Representative DYER. Mr. Powell, there are how many firms doing business in China?

Mr. POWELL. As I remember, there are about 150 American companies who have offices in Shanghai who are members of the American Chamber of Commerce in China. There are other firms at other ports in China, I think approximately 200 or 250.

Representative DYER. Do not most of those firms, those that are doing business in China, desire this law for the purpose of incorporating under it?

Mr. POWELL. I will say that the whole job of the American Chamber of Commerce in China for practically three years has been working on this proposition.

Senator BRANDEGEE. Do you know who drew this bill?

Mr. POWELL. This bill was drawn originally by the American Chamber of Commerce in China, by their attorneys in Shanghai.

Senator BRANDEGEE. Who is their attorney; do you know?

Mr. POWELL. Well, there is a Mr. Fessenden, and a Mr. Jernigan, who was the former American consul in Shanghai. Those are the men who originally, I think, drafted this bill. There have been several modifications of it before Congress, but I think the original one was drafted by those men in consultation with a committee of the American Chamber of Commerce in China. That committee is composed of about 12 of the representative American merchants in Shanghai.

Senator CUMMINS. Generally speaking, what business are those 200 or 250 firms in China engaged in now?

Mr. POWELL. Generally speaking, they are in the import and export business; that is, they buy over here and sell all kinds of American products in China, manufactured articles, and also sell Chinese-raw products over here—like vegetable oils and things like that. That is the general business. Then there are a few American banks that have offices in Shanghai who are members of the Chamber of Commerce. Then there are, I think, about three manufacturing enterprises, so far as I remember. I do not think I know of more than three now. There has been some little development along that line, but there are certainly not more than five American-owned factories in Shanghai that are members of the Chamber of Commerce.

Senator CUMMINS. As I remember, when you appeared before you stated that some kind of crisis had arisen, brought about by some amendment in what was known as the Hong Kong Ordnances, under which it was held that American citizens could not incorporate under those ordinances.

Mr. POWELL. Yes, sir.

Senator CUMMINS. That is, they could not incorporate so as to control the corporation; and that that event or that ruling had made it necessary to resort to some other plans for organization than the one or ones which had theretofore been employed?

Mr. POWELL. Yes. The details of this, I think, may be obtained from Mr. McCreary, and they were also brought out before the committee of the House. We have copies of the British law. The British have taken the action that we are trying to take now, years ago, and have erected perfect machinery under what they call "Hongkong Ordinances." I think now they have what they call the Shanghai office, under further amendments, if not orders in council. A number of the larger American firms availed themselves of this liberal British law to operate in China. Some of them were the tobacco companies, and I know of one lumber company and a few others along that line. But in 1918 the British, for some reason, but acting within their rights, amended their charter so that all the affected executives and the managing directors must be British subjects, and they made that order retroactive so that they threw all these people out of their jobs.

Senator CUMMINS. And under these ordinances, with their amendments, a corporation could be oragnized to do business not confined to export and import, but could be organized to do any kind of business in China?

Mr. POWELL. Yes; a great deal of manufacturing, but generally under the British law—anything except banking.

Senator CUMMINS. Mr. Secretary Hoover is present. I think he understands this situation in China very well, and I would like to hear from him.

STATEMENT OF HON. HERBERT HOOVER, SECRETARY OF COMMERCE.

Secretary HOOVER. Mr. Chairman, this bill had had the consistant support of the Department of Commerce before I came into the office, and in studying its origins I find that it practically had its inspiration in the British Orders in Council, which appear to have been made in 1919. That particular order in council reads as follows:

"That no person other than a British subject resident within the limits of this order shall act as managing director, or in any position similar to that of managing director, or shall otherwise exercise general or substantial control of the business of a China company."

The result of that order was to put several Americans out of businesses that they had built up under the British incorporation act at Hongkong. Following that the American Chamber of Commerce in China, composed of practically all the American firms there, began the agitation for the passage of a definite Federal incorporation law.

As I see it, obviously American citizens doing business in China can avail themselves of our State laws if they wish, but it is rather a question of establishing and protecting the responsibility and the respectability of American corporations in the Chinese eyes that they may secure Chinese capital, which comprises, indeed, a considerable proportion of the capital availed of by British subjects in China, and which has been brought into play by Americans through the use of Hongkong incorporations.

It appears to me that this question of establishing the reliability and the repute of American corporations through a special Federal corporation act under some definite control is the real issue. Otherwise our citizens could get on with our State corporation law. And I take it from their very urgent representations that they have found that they are unable through their State corporations to secure the adherence of Chinese capital to their businesses and are seeking for some relief in this direction.

One of the previous witnesses raised the question of the use of American State corporation laws by persons other than Americans for illegitimate purposes, which has reflected discredit upon our State corporation laws. There can be no question of the broad value of American corporations entering into business in China and recruiting Chinese capital, going into partnership with the Chinese is the establishment of businesses, because there naturally follows from the establishment of all those businesses a certain current of trade, and it appears to me the sole problem is to determine whether or not this does not advance the business position of our citizens in trade on the China coast.

Senator BRANDEGEE. Let me interrupt you there, Mr. Secretary. Have there been any particularly flagrant scandals among American corporations doing business in the China trade which have destroyed the faith of the Chinese in American corporations?

Secretary HOOVER. I know of only the one instance mentioned by the previous witness where there has been anything of a particularly scandalous order.

Senator BRANDEGEE. Of course, our business all over the world is done either by American private citizens or by American corporations. At the present time all the business we do with the whole world is done that way, and I have not yet heard that there was any particular scandal about any American corporation in the foreign trade.

Secretary HOOVER. The distinction here arises partially from the fact that there is practically no effective corporation law in China, and, therefore, businesses of a joint stock order are organized under the laws of various foreign countries. It is rather a broader use of incorporation than applies anywhere esle in the world. And, then, in the recruiting of Chinese capital, the repute and control of these corporations stands out to more purpose.

Senator BRANDEGEE. Do you think, even assuming that we have the constitutional power to pass this act, that it will be wise as a matter of public policy to place the Department of Commerce in the position in which this bill places it over these corporations as a sort of godfather or guardian, with power to issue orders and suspend their charters and decide whether they are doing things that are to the business interests of the United States and its good will? Do you think our Government ought to connect itself so closely with these corporations, assuming we have the power to incroporate them?

Secretary HOOVER. I made the recommendation to the House committee that these powers should be vested in the Federal Trade Commission. I felt that the powers were of a somewhat judicial order and could better rest in a body of that kind.

Senator BRANDEGEE. I am not criticizing the particular department that they are reposed in. I mean, do you think it is well to connect up our Government

in the regulation, and practically in the direction of the affairs of these companies in the Orient?

Secretary HOOVER. I think it is necessary if we are to put ourselves on an equivalent basis with the corporate facilities offered to other citizens. But, on the point Senator Walsh raised, which is probably the one you have in mind, I do not myself think, and I have not thought, that that particular provision added to the purpose of this bill at all. It has doubtful reaction on the usefulness of the bill, aside from the very power that it confers upon some American executive officer.

Senator BRANDEGEE. For instance, do you think any department of our Government ought to have the right to appraise the property of these corporations and to decide whether the amount of property turned in in payment for capital stock is of a certain value, thereby giving its O. K. to the Chinese investors that the stock is fully paid and that it is worth the price that our Government officials think it is? Do you think it is wise to make our Government the appraiser of these corporations?

Secretary HOOVER. Well, it arises from the desire of the framers of the bill to provide practically a blue-sky law.

Senator BRANDEGEE. I can understand that the gentlemen, who drew the bill, are up in the blue sky all right; but what I want to know from you is whether you would advise us as Senators to get our Government into that sort of position for the benefit of these gentlemen in China who want to take the law off and go the limit up in the blue sky?

Secretary HOOVER. My own personal reaction on that question is this, that I would prefer to go to the British method of handling those problems and, in such a specific case as this, require the value of the property to be attested by oath of the incorporators and make them liable to the stockholders by subsequent action for any misrepresentation.

Senator BRANDEGEE. What I mean is this: Suppose I were the Secretary of Commerce, and I had to pass on the property that was turned in for a great amount of stock that had been issued, and I, acting in good faith, decided the property was worth $18,000,000. Suppose they were going to issue securities against it, and the Chinese bought those securities on the judgment of a department of the United States Government that the stock had been fully paid. Now, suppose I commit an error of judgment, and the property is not actually worth 50 per cent of what I thought it was. Are not the investors then going to look to our Government and say, "Here, you appraised this property, and you gave us your official valuation, and we have put our money in and lost it"? Are they not going to come right back against our Government for compensation?

Secretary HOOVER. It is always possible for them to raise that question.

Senator BRANDEGEE. But would it not be justly raised? If I would invest money in a company under an appraisal of the French Government, that the property was actually of the value represented by the stock, and I lost my money, I would think I had a good claim against the French Government to compensate me. Would I be wrong in morals or ethics in thinking that?

Secretary HOOVER. I do not know that such a claim as that would often arise in such an interpretation.

Senator BRANDEGEE. Of course, it is purely problematical whether it would arise or not. That just depends on the business judgment and the sound judgment of the gentleman who makes the appraisal, who is human.

Secretary HOOVER. The Chinese is well used enough to corporation law not to expect that when he enters a corporation he has a guaranty from any Government.

Senator BRANDEGEE. Of course, he has not now, but if this bill goes into operation it seems to me that a department of our Government is being put in a position that it has never hitherto been in, and I am puzzled as to whether it is wise public policy.

Senator CUMMINS. I might give you one illustration upon that. I do not think the provision is a very rare one; it is found in the laws of some of the States, and was intended, of course, to prevent the watering of stock; that is, issuing a large amount of stock for property of a small value. In my own State we corrected it by providing that when stock is to be issued for property the value of the property shall be ascertained by the executive council of our State government. That has been in operation in Iowa for about 15 years, and I do not recall any person who has ever asserted a claim against the State government for any mistake made in the valuation of property.

Secretary HOOVER. We have the same provision in the California law.

Senator BRANDEGEE. I think it is quite common in States, and where there is an official tribunal, like a public utilities commission, or some body like that that is used to doing the business, and they make an appraisal; we understand that among our own citizens, but here we are dealing with orientals. We are dealing with a different race, and whether the thing would work internationally as it does in the States I am not at all satisfied.

Secretary HOOVER. There is a problem here—that of maintaining the repute of these corporations by such provisions as will prevent them from being used for illegitimate promotion purposes—but whether this is the most advantageous way of doing it I am rather in doubt. My own feeling is that one could arrive at this end more effectively by making the incorporators personally liable for the statements that they file.

Senator WALSH. Secretary Hoover, when the matter was before us before I suggested that we were equally desirous of promoting trade with Japan and assisting our citizens in Japan to develop trade there—so in India, so in Hejaz, so in Egypt—and I inquired whether we should not have a special act for corporations organized for doing business in Japan. I was told it was not necessary there, because Japan had very careful supervision.

Senator CHAMBERLAIN. We have extraterritorial treaties with several foreign countries where the conditions are not unlike conditions in China; and Mr. Caleb Cushing, away back in 1842, had a correspondence with Calhoun, who was Secretary of State, to show the reasons why it was absolutely necessary for the protection of American citizens that this should not exist. His view was—and that was the theory upon which he negotiated the treaty—that under the Chinese treaty and the laws of the Empire it was physically impossible to enforce the laws so as to protect American rights.

Senator WALSH. Undoubtedly that is true. The thing is so bad that we can not depend upon their courts to do justice by our citizens.

Senator CHAMBERLAIN. But you were speaking of Japan. Japan does protect them.

Senator WALSH. I understand; but there are a lot of other countries that are perhaps in an almost equal state of dilapidation. For instance, if we have this act, why should we not have a special act authorizing corporations in Turkey?

Senator CHAMBERLAIN. I think we have; we have several. I have not a list of them with me.

Senator WALSH. But you are speaking only of the extraterritorial jurisdiction?

Senator CHAMBERLAIN. Oh, yes.

Senator WALSH. I am not speaking about extraterritorial jurisdiction. But what reason can be assigned, Mr. Hoover, in your mind for singling out China and authorizing the organization of corporations to do business in China rather than in Turkey or in Abyssinia or in any other foreign country?

Secretary HOOVER. I take it the main reason for this act and the singling out of China is because that is a point of acute competition in trade where our people are working at a disadvantage. I have not any doubt that the same difficulties occur in Abyssinia and Turkey and other points where there is no adequate protection of corporate action, but at none of those points have we any great competition; at least we are not sufficiently active to have driven our citizens into business in a large way.

Senator WALSH. We have rather an extensive trade with the Levant, have we not?

Secretary HOOVER. Yes; and the very question may arise there. If the British Government takes the same type of action of excluding Americans from the use of British corporate facilities we may have the same question arise there.

Senator WALSH. Is it your understanding, Secretary Hoover, that the facilities afforded by the State incorporation statutes have proven so inadequate there as to drive American citizens to the protection of British statutes for the purpose of incorporating?

Secretary HOOVER. I think you will find that there are a good many Americans that have been doing business in Egypt and Turkey under the British incorporation law, or rather under the Egyptian law, which is under British protection.

Senator WALSH. Of course, you know there are a great many Englishmen who for decades back have been doing business in this country under American corporations?

Secretary HOOVER. But we have not driven them out of our corporations, and here is an actual case where they have been driven out of the corporation.

Senator WALSH. But they have elected to incorporate under our statutes. They could, of course, bring their own English corporations over here and we would permit them to do busines, but they do not choose to do that.

Secretary HOOVER. No; because we have given them perfect equality in all these problems.

Senator WALSH. The point I am making is that under British jurisdiction it does not signify anything that an American is incorporated under British laws, because they come over here and incorporate under our laws.

Secretary HOOVER. Well, we have a case of Americans doing business in Turkey under the Egyptian law.

Senator BRANDEGEE. Why is that undesirable? Why should not Americans incorporate under the laws of Egypt if they are going to do business in Egypt? What harm comes to them from using the local laws of the country?

Secretary HOOVER. None at all so long as they are allowed to be the officers of their own corporations and control them. Here is a case where they were denied that right.

Senator CUMMINS. What conditions, if any, does China or any Province in China impose upon a foreign corporation as a condition precedent to entering business?

Secretary HOOVER. I could not answer that accurately. At the time I lived in China there were no restrictions at all of any kind.

Representative DYER. And there are not now.

Senator CUMMINS. What do you think about the wisdom of exempting these corporations from the income tax?

Secretary HOOVER. I think it is very essential. I go even further than that; I think that nonresident Americans—I do not mean Americans living here and doing business abroad, but actual nonresident Americans—should be exempt from American income taxes.

Senator CUMMINS. Ought that to extend simply to the corporations or to the stockholders of the corporations?

Secretary HOOVER. I think we need to extend it to the stockholders who are American citizens if we wish to put them on a basis of equality in trading abroad.

Senator CUMMINS. Of course we could not tax the citizens of China after they had received their dividends, I suppose, but we could tax citizens of the United States after they had received their dividends?

Secretary HOOVER. Right.

Senator CUMMINS. What do you suggest would be the wise policy with regard to that?

Secretary HOOVER. I would exempt the Americans who are resident in China, in other words, who are nonresidents of the United States for the time being. But the American citizen in the United States who owns stock in the corporation must obviously be subject to tax under the income tax law.

Senator WALSH. This provides that such corporation may engage in any business or enterprise conducted wholly within China and carried on with persons in China, except that—and it gives some exceptions. That would permit them to build a railroad or engage in mining?

Secretary HOOVER. One of the advantages of establishing this law is the hope that Americans will join Chinese capital in large enterprises in China.

Senator WALSH. Well, now, we would not grant any such large powers in the United States. For instance, we would not let a company go into the insurance business. We have special insurance statutes in almost every State. We have special statutes in relation to guaranty companies. We won't let them go into those lines of business. We won't let them go into the railroad business under the general statute, because it is believed to be detrimental to the public interest to give to the ordinary trading corporation the right to engage in any of these special lines. Would we be justified accordingly in relaxing our policy as to these people who are in China doing business there?

Secretary HOOVER. It seems to me the only reservation that needs to be made in that direction is a reservation by the Chinese Government. So far as we are concerned, in an attempt to establish American business in China, we can give them as wide powers as possible.

Senator WALSH. That is, if the Chinese Government does not object we should not?

Secretary HOOVER. We ought not to object if they do not.

Senator WALSH. That is rather a cold-blooded view to take of it.

Here is another thing to which I want to invite your attention. The corporation shall not engage in any business or enterprise other than that authorized by subdivision (b), except that it (1) may purchase in the United States for transportation to China, goods, wares, or merchandise necessary to the establishment and conduct of the business or enterprise in which it is authorized to engage. That is to say, it may buy goods in this country and ship them to China, but it can not buy goods in China and ship them to this country.

Secretary HOOVER. I do not assume that it would have that effect at all. That provision must be taken in connection with the statement just before, that it shall not engage in business in the United States; here is an exception and a type of business in which it may engage in the United States.

Senator BRANDEGEE. Do you understand that these companies want the right to send goods from the United States to China and there to market them inside of China, and also the right to send goods out of China?

Secretary HOOVER. To the United States and elsewhere.

Senator BRANDEGEE. And all other countries?

Secretary HOOVER. Right.

Senator WALSH. But if it buys goods in China it buys them, of course, for the purpose of selling them, and it must sell them in the United States. Is it your understanding that under this bill it could send its representatives to the leading cities of the United States and take contracts in the United States for the shipment of goods to the United States from China?

Secretary HOOVER. I assume it is one of the purposes of the incorporation to enable it to engage in both import and export business.

Senator WALSH. That is what I supposed, but it occurred to me that this restricted it to the export business.

Senator BRANDEGEE. It certainly would be given that interpretation where it specifies that they can not do so and so but they can send goods from the United States into China. I should suppose that would preclude their sending goods out of China back to the United States. There is no sense in enumerating that one power as a grant; it would be conclusively presumed, I think, that that was all the power they had in international trade.

Senator CUMMINS. I take it that was inserted in order to meet the constitutional provisions for the regulation of commerce with foreign nations.

Senator BRANDEGEE. I suppose so, but if they really want to export and import between the United States and China, then they should say so right out in the bill. But that would be perfectly inconsistent with the title of the act and the provision where it says it is for the incorporation of companies to do business wholly in China. What I am trying to get at is what is in the minds of the people who are promoting this bill, what they want to do.

Secretary HOOVER. I have no doubt the main object is to secure the erection of businesses in China other than import and export businesses, although I was under the impression they were expecting to do some import and export business in this connection.

Senator BRANDEGEE. Do you not think it is possible for the authors of the bill so to clarify their ideas or their language as to have that object definitely and exclusively stated?

Secretary HOOVER. I have no doubt of that. Mr. Denby here is, I think, a representative of the American Chamber of Commerce, or at least is acting for them and the other Americans who are interested on the China coast, and perhaps he can clarify those things for you.

Senator CUMMINS. Referring to the question put by Senator Walsh, I can readily see that if we are to pass a general incorporation act it might be very desirable to allow the same corporation to engage in a great many kinds of business in China, but do you think it is wise to allow a corporation, any one corporation, to engage in all kinds of business?

Secretary HOOVER. Well, I think there is a natural limitation in China on the characters of business in which it can engage, in this fact, that practically all public utilities—railways and other enterprises of that order—are established through an agreement with the Chinese Government, and the American corporation can not start building a railroad anywhere it pleases. In other words, the Chinese Government retains control over such enterprises.

Senator CUMMINS. But for the protection of our own people, without regard to China, it is, I think, the general policy of all the laws of the country to

confine, or at least to exclude a corporation that is doing one kind of business from doing some other kind of business. If it is organized for the purpose of building a railway it must depend upon some concession, I assume, granted by China, but the corporation ought to do that business and no other. If it is organized for merchandising and trading it should, of course, do the business that is commonly done by a corporation so organized.

Representative DYER. Senator, this bill specifically takes care of that in section 5. When the incorporators make application for a charter they must state, among other things, under title (c), the purpose for which it is formed and the character of business in which it is to engage.

Senator CUMMINS. Suppose it should file its articles of incorporation with the Department of Commerce and say it wanted to engage in the railway business, in the electric-light business, in the street-car business, and in buying and selling merchandise, and in the insurance business?

Representative DYER. Do you mean to say that they might put in there that they want to do all of these things?

Senator CUMMINS. Why, certainly. It is not our policy, generally, you know, to permit any single corporation to engage in that wide variety of activity.

Representative DYER. That is not the intention of this bill, Senator. They must do the same as they do now when applying for a charter under the State laws; they must state the object and purpose for which they are desiring to engage in business.

Senator CUMMINS. There is no limitation on the objects and purposes that it can state in the charter.

Representative DYER. It is about the same as it is under the State laws generally.

Senator CUMMINS. I think not.

Representative DYER. In my State they have to state the purposes for which they desire to form a corporation.

Senator CUMMINS. I do not know about your State, but in most States if a corporation is organized or incorporated for the purpose of becoming a common carrier it can not engage in any other business, and so with quite a number of other public corporations of that kind.

Representative DYER. It is the intention of this bill to limit it, and if you feel that it is not so limited it can be done.

Senator CUMMINS. I think it would be much easier if our Government has retained some power of supervision, to exercise that power wisely, that a proper limitation be placed upon the kinds of business in which the corporation could engage.

Representative DYER. They have to make their application, and then it must be approved before a charter would be issued. They have to set out that they want to do various things, and no doubt it would not be accepted by the Secretary of Commerce unless it was proper.

Secretary HOOVER. It is a question whether a corporation can engage in any classes of business or in any character of business. On that latter purpose I do not see any limitation. In other words, the objects of building a railroad can be set out, and that will be understood, but as to whether a railway could go into the insurance business or some other business I think there should be some limitation.

Senator BRANDEGEE. Under the law as it was in our State, and under some of the old charters issued, they would have powers as broad as the East India company. They could conduct a mining business or a railroad business, or they could take possession of railroads, and all the limitation we used to put upon them was that they should not conduct a banking business in the State of Connecticut, but they could do it any place else if that State wanted to let them do it. That is what would happen under this. I am not saying that it is not wise to do it. These companies are going over to develop China; they are going to build stores and dredge rivers and mine coal and conduct retail stores, and that is what they will do if it is left as it is. They can make practically their own charter, but if it is an illegal business they contemplate the Secretary of Commerce would decline to issue a charter.

Secretary HOOVER. I think the whole purpose of this bill arises through a desire to do competitive business, and I think we ought to grant that liberally.

Senator BRANDEGEE. Yes; I agree with you. I am in favor of doing something and putting our companies on an equal basis with the Chinese and Japanese and British competitors. Later on I want to hear something about the constitutionality of this proposed legislation. There is no use passing the bill if it is going to be declared void.

Senator CUMMINS. How does such a company as the Standard Oil Co. do business? It is an American corporation that is under some charter issued by one of the States.

Secretary HOOVER. Yes; but they are not seeking Chinese capital.

Senator CUMMINS. So that the two chief things sought to be done by this bill are, first, making a better opportunity to secure Chinese capital, and a better protection of both Chinese capital and American capital?

Secretary HOOVER. Yes, sir. The question of securing Chinese capital and of having Chinese capital interested with American capital is more important than might at first manifest itself, because the Chinese, having no outlet for capital of its own, turns to foreign capital, and the available capital in China, by joining with the foreign capital, furnishes a better opportunity for investment and development than they would have otherwise.

Senator CUMMINS. Is there anything further?

Secretary HOOVER. I have nothing further.

Senator CUMMINS. If not, we will hear a discussion upon our constitutional authority to enact the bill.

Mr. CHAMBERLAIN. Mr. Chairman, I wish the committee would hear Mr. Reinsch.

Senator CUMMINS. Very well; we will hear Mr. Reinsch next.

I wish you would give to the reporter some description of the opportunities you have had to become familiar with trade in China and what your connections there have been.

STATEMENT OF MR. PAUL S. REINSCH, ATTORNEY, WASHINGTON, D. C.

Mr. REINSCH. I have had six years' residence in China, and have a continuing interest in American business in China.

I have not heard the discussion that has preceded, Mr. Chairman, and I shall simply bear witness to my sense of importance of this proposed legislation from the point of view of our commercial interests in the Far East, in China particularly. It seems to me that our entire national business is confronted with the very serious danger of a loss of its foreign business. And the only way in which that can be prevented is to use every possible means for making contact with the sources of that business. Now, in China one always must remember that commerce can not be distinguished from investment. The people who invest there will have the commerce. We can not be sitting here turning out our goods and thinking of sending catalogues and salesmen unless we have developed an investment interest in the country in which we desire to do business, because it is the people who build the railroads or who make the partnership arrangements with the country that are going to get that business. Now, from that point of view this legislation is extremely important, because I am satisfied it is almost necessary that our merchants should have that instrument in China if they are to be put in position to compete at all with the nations like Great Britain and Japan. That, I take it, has already been brought out.

And the legal reason for the enactment of this measure with regard to China is the peculiar condition of the extraterritorial position and rights that affect our citizens there particularly, and that we have officials and courts which administer the laws there for our citizens, and consequently we can legislate for our citizens with respect to China, as we could not legislate with respect to our citizens in any other Nation. That is peculiarly so with reference to China. Our laws virtually extend to our citizens in China and cover every phase of our citizenship there in China.

Now, the practical side of it is that it enables Americans to form corporations there with full participation of local capital, which will be under the supervision of the American authorities and will carry the prestige of the American name. Now, that means a great deal, Mr. Chairman. The prestige of the American name is something that is quite noteworthy in the Far East, in China particularly. And one favorable thing about this legislation is that it will put the corporations that will represent American business under a certain amount of official control. Of course, at the present time it would not be possible to organize corporations in the State and make them only very superficially American as to the business they are in, but that sort of thing does not

appeal to the American merchants who desire to develop our commerce in China.

Now, the point of participation of Chinese capital is exceedingly important. While our present burden of taxation lasts, it can not be expected that a great many Chinese would invest their capital with an American partner if they are subjected to the American taxation. They are not under the British and Japanese, and special inducements are held out to them to come in and do that very thing.

Now, there are predisposals to come in with American partners, because of the work that has been done there. I can not overemphasize, Mr. Chairman, the importance of that one matter, because whatever enterprise you go into with a Chinese partner, you have a far wider-reaching opportunity, and it is the proper form of association just now, owing to the prevailing form of association there. There has just been formed in England a large Chino-British corporation, which will go into that sort of thing.

The instrument created by this act will make it possible for us to take advantage of a condition which has been created there and go into that enormous market under favorable conditions.

When we think of the Chinese market, it is necessary to remember that China is just at the beginning of the development of her natural resources. She is, in that one respect, a new country, but a new country supplied with a splendid labor supply, and with an old civilization, and with a great deal of native capital that has not as yet been given a strong modern organization. It is largely personal capital, but there is a great deal of it, and by attracting it we can make every American dollar in China associate itself with three or four Chinese dollars to do the work that our capitalists desire to do there. For that reason it is very important. That, Mr. Chairman, in a very rough outline is my opinion of the importance of this measure.

I consider it of the utmost importance that we should interest the enormous capital there. There are at least 100,000,000 people there that are immediately ready to purchase the things we manufacture, if we go about it right, and there are 350,000,000 people who will take certain things. The conception that the Chinese are poor is largely mistaken. There is a great deal of povetry; they live on a narrow margin. But there is also a great deal of wealth, and a great readiness to adopt modern methods. For instance, the automobile; it will be only a few years until there will be a million automobiles in China, at the rate at which they are now being marketed there and being carried into the country. There alone is an important stake.

I will not take more of your time, Mr. Chairman, but am ready to answer any questions there may be put to me on the basis of my experience there.

Senator CUMMINS. What do you think would be the effect, not only in China, but in other countries, of organizing a corporation under a Federal law that would have the right to import goods from the United States into China, but would not have the right to export goods into the United States; while it would have the right to export goods into every other country in the world?

Mr. REINSCH. That it would be prevented from exporting from China into the United States?

Senator CUMMINS. As I understand this bill, it is not intended that any such corporation shall be permitted to sell goods in the United States or to citizens of the United States to be exported into this country. It can export goods into Great Britain, or Japan, or anywhere else, but can not sell anything in the United States, or to people to be exported into the United States.

Mr. REINSCH. As I understood the bill, it simply meant that it could not do business in the United States, but it could gather up these goods through the agencies doing business in China, and put them into American business houses. I had no idea that the law did not permit that.

Senator CUMMINS. Well, I am speaking of the corporation that is to be organized. We will say that it is a general trading or commercial corporation for the purpose of buying and selling merchandise. Now, we give it authority to buy goods in the United States—to buy goods and take them to China; we give it authority to buy goods and send them to Great Britain or any other country, but we do not give it authority to sell anything that it may have in the United States, or to export to the United States. That seems to me to be a very illogical arrangement, and I am wondering how that would affect the feeling of the people of China, and the feeling of the people of other countries into which it might export goods.

Mr. REINSCH. It would, of course, be a part of the business of any commercial organization, or business house in China, not only to gather up goods in China, but also to export.

Senator CUMMINS. Certainly, but this bill would not permit it to do that.

Mr. REINSCH. I had no idea of that.

Senator CUMMINS. If I am wrong about that I would like to be corrected.

Senator BRANDEGEE. At page 2 of the bill, line 21, paragraph (b):

"Such corporation may engage in any business or enterprise conducted wholly within China and carried on with persons in China."

And then paragraph (c) provides:

"The corporation shall not engage in any business or enterprise other than that authorized by subdivision (b), except that it may purchase in the United States for transportation to China, goods or wares, or merchandise necessary to the establishment and conduct of a business or enterprise in which it is authorized to engage."

That is wholly within China. Now, the specification that it may import from the United States into China, but it can not do any business except wholly within China, does not that seem to you to preclude it from reporting out of China?

Mr. REINSCH. It would simply affect the manner of doing that. If your interpretation is correct, it would mean that such a corporation could gather up the products, but would turn them over to a commission house in China for transport to America.

Senator BRANDEGEE. Of course, it would sell anything it wanted to in China?

Mr. REINSCH. Yes.

Senator BRANDEGEE. The things that it can do in China is not affected by this act. But why limit the corporation that is designed to promote trade in China; why limit it wholly to doing business within China?

Mr. POWELL. I think that was put in to prevent them—it was put in rather as a concession. There would be nothing to prohibit them from gathering up these products and bringing them to Shanghai.

Mr. DODSON. I heard the explanation given to the committee who framed this. I would like to give the views of the gentleman who explained it. He said that this fear, if they allowed these agencies to enter with their branches in this country, that it would lead to a deeper and sharper competition in this country.

Senator BRANDEGEE. That is to beat the tariff itself?

Mr. DODSON. Yes; but the business men would rather have the free privilege of exporting.

Senator BRANDEGEE. I should think so.

Mr. DODSON. This request was made out of a fear that it would give a little more privilege——

Representative DYER (interposing). We do not want them to be able to compete with companies organized and existing under the laws of this country and doing business here, because this bill provides certain special benefits to companies in the way of exemption of corporation taxes, and we do not want to give them a privilege that those companies do not have until we make them domestic corporations, practically.

Senator BRANDEGEE. I think they have in the bill practically what they want.

Mr. DODSON. That was a concession to the lawmakers.

Representative DYER. Our committee was not willing to give to these people doing that business the privileges now enjoyed by firms; in order to do business and compete in China with other countries doing business with their nationals they must have special privileges. Secretary Hoover suggested, even they should be exempt——

Mr. POWELL (interposing). I may say my discussion of this matter with the Members of Congress indicated that it was a scheme for Americans to get out of paying taxes. This was put in to prevent that sort of thing. In other words, the fear seemed to exist among Members of Congress that big business would go over there and manufacture over there and sell over there.

Representative DYER. Many of these companies have agents in China to buy products and send to this country. Now, anybody that has anything to sell can sell to those agents and they can send it in.

Senator CUMMINS I think the bill goes a little further than Senator Brandegee thinks it does. I think it would prohibit the export of goods from China, even the goods that were bought in China.

Mr. REINSCH. May I say that was my impression, because it says, "A business conducted wholly within China"? They can make the agreement in China, and then the goods are out of their hands, and the risk is entirely in the name of the purchasers. And it seems that even with this restriction the business of such a corporation would not be essentially limited. There would have to be an intermediary step between—they could not have agencies in this country. That is the chief point.

Senator CUMMINS. That would be true of exports into the United States.

Mr. REINSCH. Yes.

Senator CUMMINS. But it would not be true of imports into Great Britain, because a company in London could buy directly of this corporation any goods that it desired to buy, and they could be exported to London; but that would not be true of a house doing a similar business in New York.

Senator BRANDEGEE. I do not think they can export these goods by the company to London, but they can be exported by the purchaser.

Senator CUMMINS. Of course, the title would have to change in China.

Senator BRANDEGEE. Yes. I understand, I think, the desirability of doing something to aid this Chinese business. There is no question about that, and I think everybody is for it on the committee and in the Senate.

Now, I would like to hear something about our authority to do this, Mr Chairman, if we can.

Senator CUMMINS. That is the real question. I think the bill will have to be modified in some respects. As developed here this afternoon, it will have to be modified in regard to the corporation. Our real difficulty, in the subcommittee, at least, and I think it will be true all the way through, is to find some place upon which to rest our feet constitutionally. Let us hear from Mr. Hackworth.

Mr. CHAMBERLAIN. I would like to have Mr. Reinsch state his connections and the fact that he was a former minister to China.

Senator CUMMINS. Will you please state fully your experience and official connection in China?

Mr. REINSCH. I was formerly minister to China, and still have business connections there.

Senator BRANDEGEE. When did you go to China?

Mr. REINSCH. In 1913.

Senator BRANDEGEE. You went in 1913, and stayed there until when?

Mr. REINSCH. Until 1919.

Mr. CHAMBERLAIN. Were you not formerly connected with the University of Wisconsin?

Mr. REINSCH. Yes, sir.

Mr. CHAMBERLAIN. In what capacity?

Mr. REINSCH. Professor of international law there.

Senator BRANDEGEE. Were you residing at Peking most of the time?

Mr. REINSCH. All of the time, absolutely.

Senator CUMMINS. We are very much obliged to you, Mr. Reinsch, for your statement.

We will hear from Mr. Hackworth.

STATEMENT OF MR. G. H. HACKWORTH, ASSISTANT SOLICITOR, DEPARTMENT OF STATE.

Senator CUMMINS. Will you please state your name in full and your official position?

Mr. HACKWORTH. G. H. Hackworth, assistant solicitor, Department of State.

Senator CUMMINS. Now, if you will present the legal aspects of the bill from a constitutional standpoint, we will be obliged to you.

Mr. HACKWORTH. The question of the constitutionality of this bill has become a little more complex to me since I have heard the views expressed here.

I had thought from the beginning that this bill would be considered as entirely within the jurisdiction of Congress to enact, because it has to do with foreign commerce. I am still inclined to think that that is true, by reason of the fact that, as you have already indicated, it provides for the purchase of goods in the United States and their shipment to China. That would be a matter of commerce with a foreign nation, and any matter with respect to commerce with foreign nations, of course, is within the province of Congress to regulate. It seems to me that because of the fact that the bill has to do with trade with another nation, the Congress would have the authority to enact such legislation.

But there are two other reasons which, perhaps, are equally good.

Senator CUMMINS. Before you pass from that point, suppose a corporation were incorporated under this act to organize and construct and operate a street car system in Peking, and in the course of its construction it had occasion to buy rails or engines in the United States and ship them from this country to China, do you think that that fact would give to Congress the authority to make provision to organize the corporation, and would that be a regulation of commerce with foreign nations?

Mr. HACKWORTH. I should say that Congress at least would have the power to regulate the matter of commerce; it could say how such rails might be shipped, and when, etc.

Senator CUMMINS. Undoubtedly; but I mean would it have authority to authorize or create the corporation itself?

Mr. HACKWORTH. I am inclined to think it would have the power to create a corporation to engage in that sort of business. That might be open to question, but I am inclined to think it would have that power, because it has to do with foreign commerce and with American citizens in China over whom this Government retains jurisdiction.

But it seems to me there is another particular reason why this bill would be constitutional, and that is that, as has already been explained, the laws of China do not apply to American citizens in that country.

Senator BRANDEGEE. How is that relevant to the powers of Congress under the commerce clause; this extraterritorial right?

Mr. HACKWORTH. That is entirely separate from the commerce clause; under another provision of the Constitution the Congress has the power to enact such legislation as may be necessary and proper for carrying into execution the powers conferred by the Constitution (Art. I, sec. 8), and there is a provision that the President shall have the power, by and with the advice and consent of the Senate, to conclude treaties. There have been a number of treaties concluded with China, by which we have been given jurisdiction over our nationals in China, and in order to carry out these treaties and exercise those treaty rights it is necessary for Congress to pass certain legislation. Congress has done this since 1848. It is provided by an early act (June 22, 1860) that the laws of the United States, which may not be inapplicable for some reason or another, shall apply to American citizens in China. Very recently Congress has enacted certain specific laws with respect to the conduct of the business of American citizens in China. As late as March 3, 1915, Congress enacted legislation specifically applicable to the extraterritorial jurisdiction of the United States in China, which undertook to regulate the practice of pharmacy and the sale of poisonous drugs by American citizens in the consular districts in China. That legislation provides, in effect, that no person shall be allowed to dispense drugs in a drug store operated by American citizens unless they first qualify as licensed pharmacists under the act.

Senator BRANDEGEE. Isn't that all on the theory that we have the right to fix the status of our own citizens abroad, and that we can pass laws governing and controlling them while they live in these extraterritorial districts? But what has that to do with our authority to pass a Federal incorporation act? I suppose our citizens in China are subject to our jurisdiction and laws just as if they were on a United States battleship in mid-ocean—we can control them—but what has that to do with the power of Congress to enact a Federal incorporation act under the commerce clause?

Mr. HACKWORTH. It seems to me we do not necessarily rely on the commerce clause.

Senator BRANDEGEE. Which do you rely on?

Mr. HACKWORTH. I think we can rely on both of them.

Senator BRANDEGEE. If neither one is any good, both of them together are not good.

Mr. HACKWORTH. I think they are sufficient; I think either one is sufficient.

Senator BRANDEGEE. This is really a regulation of commerce; that is what you have to stand on.

Mr. HACKWORTH. No; I think not.

Senator BRANDEGEE. Then discard it and stand on the other.

Mr. HACKWORTH. I would stand on the other——

Senator BRANDEGEE (interposing). What treaty, if any, is there that makes it necessary for us to enact this legislation?

Mr. HACKWORTH. There is no specific treaty, but we have by virtue of several treaties this extraterritorial jurisdiction in China, and if we want adequately to carry it out we must pass such legislation as will make it effective as to the citizens of the United States; and this will assist in carrying it out. The Chinese people can not enact legislation to regulate the conduct of our people. I think it is necessary for us to enact such legislation as would enable us to have a treaty executed in accordance with its spirit.

Senator CUMMINS. Now let me pursue that a moment: A treaty with China gives us the same right to protect our nationals in China as we would have if they were citizens residing within the territorial limits of the United States.

Mr. HACKWORTH. Precisely.

Senator CUMMINS. That is the effect of it. Now, we can do no more for them, living in China, than we could do for them if they were living here. I assume that must be correct. Now suppose we were to attempt to pass a general incorporation law providing that men living in Chicago might organize to carry on the dry-goods business under a Federal law, with the privilege of buying goods outside of the State of Illinois; do you think that would be a regulation of commerce among the States?

Mr. HACKWORTH. Well, in so far as that corporation was engaged in buying goods outside of the State, I think that would be within your power.

Senator CUMMINS. What I asked is: Do you think that they would have the right or authority to organize a Federal corporation doing business in the State of Illinois, adding only the provision that that corporation might, if it chose to do it, buy goods outside of the State of Illinois?

Mr. HACKWORTH. I would not be prepared to say that that would be sufficient to justify the Congress.

Senator CUMMINS. Now, in what respect does that case or illustration differ from the care and protection of our nationals in China?

Mr. HACKWORTH. I think that the Congress and the Federal Government has to go a little further with respect to the men who conduct business in China than it does with respect to the same persons in the United States, because they are removed, of course, from the local jurisdictions; they are not subject to the laws of the States as they are when they are here.

Senator BRANDEGEE. Supposing—instead of applying it to China—supposing, for example, this same bill was applied to Persia, disregarding the extraterritorial rights——

Mr. HACKWORTH (interposing). I think we would have the same right in Persia, because we have the same extraterritorial jurisdiction as in China.

Senator BRANDEGEE. Supposing, then, East India?

Mr. HACKWORTH. We could not enact legislation with respect to East India without some arrangement with England.

Senator BRANDEGEE. We could incorporate a company to do business in East India.

Mr. HACKWORTH. You could if you relied on the commerce clause, but not on a treaty.

Senator BRANDEGEE. But now, take a country with which we have no treaty at all; Central Africa, for instance.

Mr. HACKWORTH. If it were held that the transport of goods from the United States to that foreign country was sufficient, then you could, of course, make it applicable to any country, because it would be a matter of commerce with a foreign nation. There is a question, of course, whether the courts would hold it to be sufficient to enable Congress to act. Personally, I am inclined to think it would be sufficient.

Senator BRANDEGEE. You have no authorities, decisions, or the works of text writers on that subject?

Mr. HACKWORTH. There is a decision of the Supreme Court that has a bearing on this.

The Supreme Court held, in the case of in re Ross (140 U. S., 463) that the treaty-making power extended to all proper subjects of negotiation with foreign Governments. The Government of China having by treaty exempted citizens of the United States from the application of its laws, the duty devolves upon the Congress of the United States to provide the laws which shall be applicable, in lieu of Chinese law, to citizens of the United States resident in China. That is my personal view—the last statement. But in the case of in re Ross, just referred to, they held that the treaty-making power extended to all proper subjects of negotiation with foreign Governments. In other words, that the treaty-making power could conclude treaties with reference to all proper subjects with foreign Governments.

Senator BRANDEGEE. I would not want any decision to assure me of that.

Senator CUMMINS. Why does not the President, then, negotiate a treaty authorizing the dealing of these people in China?

Mr. HACKWORTH. I think he could do it by treaty—that is, it could be done under treaty—but I think it could be handled more readily by Congress. I have no doubt that there could be a treaty negotiated to handle this matter in a manner similar to that which is proposed by this bill.

But it seems to me that the strong point in favor of this bill is that we are under obligation to enact proper laws for the conduct of our citizens in China.

Senator CUMMINS. Undoubtedly Congress has authority to enact any law that is necessary to carry out the provisions of a treaty. I think no one would question that. And your position is that this bill is a law that at least is appropriate to effectuate the provisions of the Chinese treaty?

Mr. HACKWORTH. Exactly.

Senator CUMMINS. I think we are coming finally to some definite idea. I had not thought about it along that line.

Senator BRANDEGEE. That has not been suggested before. That would be a valid stand to take, if that be true; if this purposes to carry out the provisions of a treaty.

Mr. HACKWORTH. It does carry out the provisions of a treaty to the extent that we endeavor to control our own nationals. Now, if it is necessary to enact legislation to provide for the conduct of our people in China, then it is a provision for carrying out a treaty. If these people go over there and see fit to get out from under our conrtol by organizing a corporation under some foreign law, then we lose control over them as a corporate entity.

Senator BRANDEGEE. We do not lose control over them as citizens.

Mr. HACKWORTH. But they organize a corporation under the laws of another Government and we lose control over the corporation.

Senator CUMMINS. Will you read, if you have it before you, those provisions of the treaty which you think would be expedited by the passage of this law?

Mr. HACKWORTH. There are several treaties, beginning with the treaty of 1844, and coming down to the treaty of 1903.

Senator CUMMINS. Will you put into the record a copy of the treaties which you think relate to this particular subject, and which do confer jurisdiction or power on Congress to enact legislation? I think it would be helpful.

Senator BRANDEGEE. Yes.

Mr. HACKWORTH. I can indicate the provisions. The first would be article 21 of the treaty of 1844, and also article 25 of the same treaty, which are as follows [reading]:

"ARTICLE 21. Subjects of China who may be guilty of any criminal act toward citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China, and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the consul or other public functionary of the United States thereto authorized according to the laws of the United States; and in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

"ARTICLE 25 [substance]. All questions in regard to personal and property rights between citizens of the United States are subject to regulation of their own Government.

"Controversies between citizens of the United States and those of other countries are to be regulated by treaties existing between the two countries without interference by China."

Also articles 11 and 28, of the treaty of 1858, as follows [reading]:

TREATY OF 1858.

"ARTICLE 11. * * * Subjects of China guilty of any criminal act toward citizens of the United States shall be punished by the Chinese authorities according to the laws of China; and citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble, or wound the persons or injure the property of Chinese, or commit any other improper act in China, shall be punished only by the consul or other public functionary thereto authorized, according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities.

"ARTICLE 28. All questions in regard to personal and property rights between citizens of the United States subject to regulation of their own Government.

"Controversies between citizens of the United States and those of other countries to be regulated by treaties existing between the two countries without interference by China."

Article 4 of the supplemental treaty of 1880, as follows [reading]:

SUPPLEMENTAL TREATY OF 1880.

"ARTICLE 4. When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial, and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interest of justice. If he so desires, he shall have the right to present, to examine, and to cross examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case."

The citation of the treaty of 1903, I have not with me.

Senator BRANDEGEE. You can put that in?

Mr. HACKWORTH. Yes, sir.

(The part of said treaty referred to was afterwards furnished by Mr. Hackworth, and is here printed in full, as follows:)

TREATY OF PEACE, AMITY, AND COMMERCE.

ARTICLE XXI. Subjects of China who may be guilty of any criminal act toward citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China; and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the consul or other public functionary of the United States, thereto authorized, according to the laws of the United States. And in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

ARTICLE XXV. All questions in regard to rights, whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction of, and regulated by, the authorities of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China.

It might be interesting to the committee also, in considering this question, to take into account the provisions of section 4086 of the Revised Statutes. By that section we extend to American citizens in China the jurisdiction, criminal and civil, of the United States.

Senator CUMMINS. Have you that here?

Mr. HACKWORTH. Yes, sir; it reads as follows [reading]:

"LAWS APPLICABLE TO EXTRATERRITORIAL JURISDICTION IN CHINA.

"SEC. 4086, Revised Statutes. Section 4 of the act of 1860.

"Jurisdiction in both criminal and civil matters shall in all cases be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law nor the law of equity or admiralty nor the statutes of the United States furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies."

Senator CUMMINS. Is there anything else?

Mr. HACKWORTH. I would like to remark that it seems to me that Congress had in mind at the time of the enactment of this provision of law the very thing that I am now trying to indicate, namely, that wherever it is necessary to extend our laws regarding American citizens to carry out treaty provisions, Congress has the authority to do it.

Senator CUMMINS. The only thought in my mind that is still to be settled by reflection is that we are doing more for our people in China than we are doing for our people here in the United States. That is one of the difficulties about trying to found the bill upon the provisions of the treaty. However, we will examine that carefully. That is a point of great interest, and we will examine it from the standpoint of those who really want to find some foundation for this bill.

If that is all, we will hear Mr. Denby. Is there anything further?

Senator BRANDEGEE. I do not care for anything further.

Senator CUMMINS. We thank you very much, Mr. Hackworth.

Mr. Denby, do you want to be heard?

Mr. DENBY. I would like to be heard five minutes.

STATEMENT OF MR. CHARLES DENBY.

Mr. DENBY. Senator, for the sake of brevity, I want to dwell on one or two controverted points here.

Senator CUMMINS. State your name, and give your opportunities for having become familiar with trade and commercial operations in China, and so on.

Mr. DENBY. I have been a resident in China for 35 years; secretary of the legation at one time, and consul general in Shanghai, and advisor to the consul, and some years in commercial life in China.

The particular point I want to refer to here is this, the necessity and our plain duty to enact laws which we have a perfect right to enact, and which will not deprive China of any rights, but will encourage Chinese to assist in the development of their own country. China has no opportunity to protect itself against the blue-sky operations, or to pass blue-sky laws, and if the Chinese are to be protected against any improper plans and operations of the American people it must be done under laws enacted by the United States. Under our laws it is possible to incorporate under the laws of 48 different States. The provisions of those charters are not essentially the same. The Chinese merchant dealing in cotton goods might find to-day that he had dealt with a man having a West Virginia corporation, and he might have a difficulty with him and go to court with him and get a decision in his favor on that charter.

He might, the next year, be dealing with a man who has a Connecticut charter, or is organized under the laws of Connecticut, and remembering his former experiences, and not knowing that the laws may be radically different, would rely on his former decision, and would thereafter find that he had dealt with a man who had a radically different charter. We, therefore, put ourselves in the attitude of so confusing the Chinese in regard to our corporation law that no man can hope to find out, within a generation or two generations, what he does have. It seems to me there perhaps comes a possible justification for a commerce jurisdiction. If you have not the power to enact a company law, you have at least the power to regulate it. The only way to regulate it is, you have to start under a new charter. That is one point.

Now, we need a law very much, because we want Chinese capital to operate with us. It will operate in this way: A Chinese will come to me and say, "I have the right to put an electric light plant in a certain city, and it will require $700,000; I will put in $500,000; will you put in the other $200,000?" My only safeguard is the laws of my own country. Now, that is another point.

Now, to take up one or two points that have been mentioned here: One is that extension of a franchise by the Secretary of Commerce. I do not think that is essential at all. The Chinese knows, when he gets into an American company, he is doing business with a man under the laws of the United States, and not Chinese law at all. I do not see any possibility for any understanding in that.

The United States court is a court where every day in Shanghai there is rendered a decision in favor of an American, and that has never been the subject of a diplomatic controversy. I can not see how a Chinese investor can be hurt by radical suppression of his company, if he felt it was done for the protection of the United States. As a matter of fact, without this law at

all our consuls would not allow a man to conduct himself in such a way as to hurt the material interests of the United States. This is not a new thing at all; it is merely a new expression of it. Our district attorney, Mr. Holcomb, would undoubtedly concede this one point.

Now, the question was asked whether State corporations have actually done any harm. There has been some talk, chiefly on the ground that they are not identical. The Chinese does not know with whom he is dealing and does not know the extent of the charter.

Senator BRANDEGEE. They know where a company has been doing business with them for years and treated them honestly, whether it has a State corporation——

Mr. DENBY (interposing). Absolutely.

Senator BRANDEGEE. For instance, the Standard Oil Co., and the American Tobacco Co., and the United States Steel Corporation are in good standing over there.

Mr. DENBY. Yes; absolutely. They have a good standing, just as individuals have. It is a matter of business with the Chinese.

There has been no gross misrepresentation. That one feature is very essential. We have had companies organized with a nominal capital, who have done some harm there by misrepresentation, but I will not mention any names, because they have mended their ways, and I will not mention names.

Senator CUMMINS. They were organized under the State laws; those should be revised.

Mr. DENBY. It is impossible—of course, I am not a lawyer, but I think it would be impracticable to revise the laws of 48 States. But we can make a national law so much better than the State law, and then the State charters will die out. I haven't any doubt that if we enact some such law we will have $10,000,000 under the American flag within a few years, because they like us. There is no use dwelling on that point, but they would rather come under an American charter than under a British charter. The field is wide, and I think you gentlemen of the Senate have the absolute power to reform the situation.

Our citizens are two kinds, corporate citizen and the natural citizen. We can not allow the corporate citizens to run wild any more than we can the natural citizens. That is all, I think, gentlemen. It is a great big field; it is wide open to us; it is absolutely in the power of the United States. It is our plain duty to regulate the situation. I thank you.

Senator CUMMINS. It was very kind of you, Mr. Denby, to make the statement.

Is there anything else?

Mr. CHAMBERLAIN. I think the committee would like to hear Mr. Holcomb.

STATEMENT OF MR. CHAUNCEY P. HOLCOMB, DISTRICT ATTORNEY FOR THE UNITED STATES COURT FOR CHINA.

Mr. HOLCOMB. I am originally from Delaware, but for the past six years I have been District Attorney for the United States Court for China, and as such I have had, perhaps, as good and ample an opportunity to find out the condition of American corporations in China as anyone.

I would first like to suggest that if I had the honor to be a Member of Congress or a Member of the Senate of the United States, that I would certainly consider passing the proposed bill that is before you under the treaty clause of the Constitution rather than under the power to regulate commerce between States. When we obtained extraterritorial rights in China, 70 years or more ago, China conceded and granted to America the exclusive jurisdiction over American citizens. It is needless for me to say that at that time there were very few corporations in operation. The class of business men who went there, from the accounts we have of them, were first-class business men and men of high ideals, and that, no doubt, tended a great deal to make the Chinese think of us in the complimentary manner that I think they do even to-day, but I am sorry to say, certainly from my experience in the last six years, that many corporations from Delaware, Maine, Arizona, West Virginia, and various States, have come there that I consider, a great many of them, wildcat corporations. There is absolutely no way of having any supervision over them unless they really break some law of the United States.

Senator BRANDEGEE. This bill would not stop that.

Mr. HOLCOMB. No, sir; it would not stop it, but, as Mr. Denby has just said, and I agree with him, that many of the Americans who go there seek Chinese assistance, which means capital, which means business, because a Chinese who has capital invested in the business is going to hustle and get business. Now, they won't take up with a man who has a Delaware charter, or an Arizona charter, but if they have a charter that is supervised by the United States they will; that is, it is my judgment that they will.

Now, I might state a case in point to show how futile it is to try to control corporations there: Four years ago there was organized a corporation—it may be the one Mr. McMurray spoke of—the Oriental Trust & Banking Co., I think it was; they got a charter of $5,000,000 gold—that is, in round figures. After they got through their corporation papers in Delaware they changed all their board of directors to Japanese. They wanted to come to China and engage in the banking business. Even in Delaware they do not allow a banking business to be conducted under a general charter; they must go to the general assembly and get their charter, which they did not do. The only way they were kept from doing business was that the consuls and the State Department, where they wanted to do business in China refused them recognition. But there is no compulsory registration law in China; they might have started doing business there, but after they received that reception they did not do any actual business until about a year ago, when they started a lottery, which is absolutely against the American law; that is, we found some lottery tickets. But, even if we had found the corporation officers, we could not have arrested them, because they are Japanese, and as such, are entirely under Japanese courts. We could, perhaps, have taken the books, but if these were in a Japanese house we would have had to go through a Japanese court to do that. I mention this to show the condition that exists now.

But I firmly believe if this legislation is passed it can be passed under the treaty, which—I will not say is above the Constitution, but it is certainly equal to statute law. Here is a treaty whereby we are allowed to trade with China, and existing legislation to carry the treaty into effect does not cover the situation fully, but we have cured that by this bill by making a citizen of the corporation, and that corporation then comes under the treaty as an American citizen permitted to do business in China. I am not constitutional lawyer enough to say whether you could pass the pending bill under the clause regulating commerce between the States. I think you have something higher, or at least as high—a treaty ratified by the Senate of the United States and which has been in existence since 1844. Congress has passed acts a number of times under that and put them into effect. It passed the act creating the United States Court for China; it passed several amendments to that. It passed the act mentioned by Mr. Hackworth about the practice of pharmacy.

Now, I would like to call attention to the use of the Alaska statutes for corporations in China. On account of the trouble of getting articles of incorporation from the States and waiting three or four months, and the Chinese being more or less suspicious of them, somebody dug up the Alaska law and applied to the court for an interpretation of it, and to my recollection 40 charters have been granted under it. I think if this pending legislation can not be passed that the Alaska law, with some amendments, might be utilized. But if this proposed law is passed it will put American corporations on a plane that they have not been on since American corporations came into China.

Senator CUMMINS. We are very glad to have heard from you.

Mr. CHAMBERLAIN. I may want to say something later; I do not believe I can be heard very well this evening. Do you care to say anything, Mr. Dodson?

Mr. DODSON. I would like to be heard briefly.

Senator CUMMINS. We will hear you very briefly.

STATEMENT OF MR. W. D. B. DODSON, MANAGER OF THE CHAMBER OF COMMERCE, PORTLAND, OREG.

Mr. DODSON. My name is W. D. B. Dodson; I am manager of the Chamber of Commerce in Portland, Oreg., and I am delegated here to speak for certain business interests in that city; delegated here for that purpose.

I think Senator Brandegee spoke of certain men and about those men who wanted to lift the lid in China and go to the blue sky. Absolutely the opposite is true; we want to put the lid on. The whole theory is to put the lid on and give the very highest form of business.

Senator BRANDEGEE. That was not my product; that was Mr. Hoover's proposition.

Mr. DODSON. Probably it was Mr. Hoover who suggested that.

But we want a specific case of how one business firm is now affected. May I give you one? Some of our people are in a business firm that will serve as an illustration. The China Importing & Exporting Lumber Co. was organized about 20 years ago under the Hongkong laws and was financed by British and American capital. They had some trouble, and were later refinanced, taking in considerable German capital. The war came on and forced the German capital out of the British company. In the first transfer of that capital our people in Portland acquired a large interest. The company is an importing and exporting company, and does a general importing and exporting business, operating steamboats on the Yangtze River and doing a general business of its kind. Here is the general situation: Orders in council were issued by the British, regulating capitalists, the orders in council came out in 1915, which the British Government put in effect, no doubt, to catch the foreigner that might have money in there, and drive him out of the British Hongkong company. That drove our people out, and they finally extended that to 1920, and made it absolutely obligatory upon our people, who were managing directors of that company. Now, they have disbursed there approximately $5,000,000, and they have built up a business in 20 years. They bought the shares of stock for that reason.

We have a steamship line going to China, and we are desperately anxious to build up that line and have a cargo going to China. My people want to make that a permanent American company. We could not get control of that company and do business as the British are doing it unless we incorporate in China. In the British company there are Chinese stockholders. These Chinese are anxious to put their investments in with us, and we want to invite more capital in. It comes to this point, that these men do not want to continue that work for an extension and development of our business unless they have proper protection. They want full power to import and export. But when you go to the House over there, the House feared that we wanted to open agencies here, which might give an additional advantag to these companies here, and that the tariffs would be affected in that way.

Senator BRANDEGEE. It certainly would be an advantage if there is——

Mr. DODSON (interposing). I think it would. Whether we do it or not, the silk handkerchief will be manufactured by them, if not by us.

Senator BRANDEGEE. All I mean to say is that these companies doing business in China, with the power to export here, if they are exempted from taxation, they have an advantage over a competitor.

Mr. DODSON. Yes; there is an advantage, and the House felt they wanted to limit that instead of coming directly they must come through a commission house.

Now, unless there is some question you want to ask us, I think that is all.

Senator BRANDEGEE. No; I am satisfied of the desirability of finding some solution for this situation, as I am for the bill, maybe with some amendments, provided I can satisfy myself it is constitutional.

Mr. DODSON. We want to tell you that there is a big commercial theater opening there, and some very high-class men are going there, and we want to give them an equal break.

Senator CUMMINS. Senator Chamberlain, do you care to be heard?

Mr. CHAMBERLAIN. I do not want to be heard orally, but will later submit a brief which I desire to have incorporated in the record.

Senator CUMMINS. We can close the hearings now, with the exception of whatever you desire to submit in the matter.

(Mr. Chamberlain later submitted the following written brief:)

BRIEF OF HON. GEORGE E. CHAMBERLAIN, OF WASHINGTON, D. C.

House bill 4810, introduced in the House of Representatives by Mr. Dyer April 21, 1921, having passed with slight amendments, is now under consideration by this committee. It has for its purpose the promotion of trade between this country and China, and as a means to that end proposes to authorize the organization of Federal corporations.

I have been present at the hearings before the committee, and from the trend of the questions asked by members of the committee. I conclude that there are two main propositions involved about which the committee has sought to be advised, and these are: First, is such legislation constitutional? Second, if it be conceded that it is constitutional, is it good policy or is it expedient to enact it?

I shall not discuss the second proposition, because it has been gone into at great length by gentlemen who are thoroughly coversant with the situation,

and from expressions of members of the committee during the hearings, I am sure the committee feel a sympathetic interest in the proposed legislation, if in their opinion it is not obnoxious to the Constitution.

I shall briefly discuss the first question involved, and that is the constitutionality of the measure, and I maintain that the proposed legislation can be justified and sustained either under treaty stipulations between the two countries, or under the commerce clause of the Constitution, Article I, paragraph 8, which provides for the regulation of commerce with foreign nations and authorizes Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

In determining this question it must be remembered that while the commercial and other relations between China and the nationals of the western powers date from very early times, it was not until the treaty of Nanking in 1842 that there were any formal treaty relations. In the very nature of things during the nontreaty period there was much friction between foreigners doing business with the Chinese and the Chinese authorities, due to many causes which it is unnecessary to discuss.

The situation of American residents in China was discussed at length by Hon. Caleb Cushing, then minister to China, in a communication to John C. Calhoun, Secretary of State, September 29, 1844, in support of the doctrine that American citizens in China should not be subjected to the laws and courts of the territorial sovereign. This was in line with the policy followed by Great Britain under the treaty of Nanking, to which reference has been made. In discussing the situation Mr. Cushing wrote:

"Nothing, it would seem, correspondent to our law of nations is recognized or understood in China. I had some evidence of this in the progress of my own intercourse with the Chinese authorities; and there is abundance of public facts to the same effect. When, for example, Commodore Anson visited China in 1841, the Chinese claimed to apply the municipal law to the *Centurion*, as they have repeatedly since then sought to do in the case of other ships of war, those of the United States as well as of Europe. In the progress of the late events we have seen the Chinese Government subject a diplomatic agent of Great Britain to personal restraint and undertake to restrain the consuls of all foreign powers in order to enforce the submission of the subjects of one power. Subsequently, during the prosecution of hostilities, the Chinese paid no regard to flags of truce, and treated prisoners of war of both sexes as common felons. These things evince utter ignorance, or at least disregard of the law of nations as understood in Europe. Similar inferences are deducible from the fact that formerly all ministers of European States in China (except, perhaps, those of Russia) were compelled to admit, either directly or indirectly, the sovereignty of China; for the several Dutch and Portuguese ministers who visited Peking did homage to the Ta Howang Tei, and even Lord Macartney and Lord Amherst, though the former peremptorily refused to do homage and the latter was reluctantly persuaded by Sir George Staunton to refuse it, yet went to Peking, both of them, knowingly and with tacit acquiescence designated as tribute bearers."

This correspondence led to the execution of the treaty of 1844, which was followed by the supplemental treaties of 1858 and 1880, to which I respectfully refer the committee. (U. S. Treaties and Conventions, Vol. I, pp. 196, 211, 239.)

These treaties established the extraterritorial principle, and I call the attention of the committee to cetrain articles of the treaties of 1844 and 1858, which it seems to me authorize the enactment of laws by Congress to protect our nationals in certain parts of China both in their persons and property.

Article XXI of the treaty of 1844 provides:

"Subjects of China who may be guilty of any criminal act toward citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China, and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the consul or other public functionary of the United States thereto authorized according to the laws of the United States; and in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides."

Article XXIV contains, amongst other things, the following:

"* * * if controversies arise between citizens of the United States and subjects of China which can not be settled amicably otherwise, the same shall

be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction."

Article XXV declares:

"All questions in regard to rights, whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction of and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China."

These provisions show that the treaty intended that Congress was to have the right to legislate for the protection of the property, as well as the person of our nationals within the territory in China where extraterritoriality existed.

A member of the committee expressed some solicitude with regard to claims that might be made by the Chinese against this Government in case of the failure of a corporation organized under a Federal statute such as the one proposed. "Might not the nationals of China," he asked, "have a moral claim against our Government in such event?" To this I answer, "The treaty expressly makes provision for the collection of claims of the respective nationals." Article XVI is as follows:

"The Chinese Government will not hold itself responsible for any debts which may happen to be due from subjects of China to citizens of the United States, or for frauds committed by them; but citizens of the United States may seek redress in law; and on suitable representation being made to the Chinese local authorities through the consul, they will cause due examination in the premises and take all proper steps to compel satisfaction. But in case the debtor be dead, or without property, or have absconded, the creditor can not be indemnified according to the old system of the co-hong, so called. And if citizens of the United States be indebted to subjects of China the latter may seek redress in the same way through the consul, but without any responsibility for the debt on the part of the United States."

In the treaty of 1858 the doctrine of extraterritoriality is further established in the following:

"ART. XI. * * * Subjects of China guilty of any criminal act toward citizens of the United States shall be punished by the Chinese authorities according to the laws of China; and citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble, or wound the person or injure the property of Chinese, or commit any other improper act in China, shall be punished only by the consul or other public functionary thereto authorized, according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities."

Then, again, Article IV of the supplemental treaty of 1880 still further establishes the principle of extraterritoriality and recognizes the right of our Government to legislate for the protection of our nationals in the following words:

"When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires he shall have the right to present, to examine, and to cross-examine witnesses. If he is dissatisfied with the proceedings he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case."

These citations, of course, do not establish the constitutionality of the pending measure, but Congress has repeatedly acted upon the theory that it had the power under these treaty stipulations to legislate with respect to our nationals, their persons, and property in those portions of China subject to our extraterritorial jurisdiction, and reasoning by analogy, has not Congress the power under these same treaties to legislate for the further protection of those same nationals?

I merely cite for the convenience of the committee the legislation by Congress to give vitality to the evident purpose and spirit of the several treaties to which reference has been made. See Ninth Statutes at Large, page 276, passed August 11, 1848; Twelfth Statutes at Large, page 72, passed June 22, 1860; Fourteenth Statutes at Large, page 322, passed July 28, 1866; and Sixteenth Statutes at Large, page 184, passed July 1, 1870. The substance of all these statutes is to be found in sections 4083–4130 of the Revised Statutes. See, also, the act of June 30, 1906, entitled "An act creating a United States court and prescribing the jurisdiction thereof." (24 Stats., pt. 1, p. 814.) This act defines the jurisdiction of the consular courts and of the United States Court for China.

The constitutionality of this legislation conferring jurisdiction upon consular agents in those parts of China covered by treaty stipulations was attacked in the case of Ross *v.* McIntyre (140 U. S., 453). In that case the accused was charged with murder committed on board of an American ship in the harbor of Yokohama, Japan, and one of the questions involved was whether the accused could claim the guarantees of the Constitution with regard to indictment by a grand jury and trial by a petit jury. The Supreme Court denied, in an opinion of some length, that the accused had the right to claim these privileges and said, amongst other things, that "By the Constitution a government is ordained and established 'for the United States of America,' and not for countries outside their limits. The guaranties it affords against accusation of capital or infamous crimes, except by indictment or presentment by a grand jury, and for an impartial trial by a jury, when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad. The Constitution can have no operation in another country. When, therefore, the representatives or officers of our Government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither one being obligatory upon the other." (See Ross *v.* McIntyre, 140 U. S., 453.) The principle laid down in this case is fully sustained by the Supreme Court of the United States in the so-called insular cases.

Legislation having for its object the protection of citizens of the United States doing business in China, and so promoting the commerce between the United States and China, has been pending in one form or another for two years or more. While our Government has been discussing the propriety, as well as the constitutionality of it, the British Government, with its usual foresight, and in order to extend its commerce and enlarge its sphere of influence, has been overcoming all difficulties and securing the business that our country ought to have.

Americans had invested large sums in companies formed under British ordinances, which only required that a majority of the directors of such companies should be British subjects. Americans could therefore act as managing agents or managing directors of such companies. But the regulations of the British ordinances were so changed on October 9, 1919, that "no person other than a British subject resident within the limits of this order shall act as managing director or in any position similar to that of managing director, or shall otherwise exercise general or substantial control of the business of a China Company." (See China Year Book 1919, p. 647; Willoughby, Foreign Rights and Interests in China, p. 189.)

The effect of this was to compel the retirement of American managing directors or managers, no matter how much of the stock was owned or controlled by Americans. It is denied that this legislation was intended to operate against Americans, but whatever may have been the intent the result is the same, and American interests most seriously affected. The net result to the British Empire is the extension of its commerce in the Orient. There seems to be no effective way to solve the situation and to extend our commerce with China, except by authorizing Federal incorporation. These will be but instrumentalities for the extension of our foreign commerce, and instrumentalities which will have the benefit of our own courts under the treaties with China and the laws of Congress enacted in pursuance thereof.

The plain intent and purpose of the pending measure is to aid our foreign commerce, by the creation of agencies to extend it. If the bill as it passed the House seems to use language in some parts that seems to negative that intent (and I am inclined to think that possible) then a few amendments would clearly bring it beyond any question within the plain letter of the foreign commerce clause of the Constitution. I am submitting herewith the bill as it passed the House with a few suggested amendments which I think will remove the constitutional objections that may be made.

No one, so far as I have heard, has raised any question as to the power of Congress to authorize the creation of corporations to facilitate interstate or foreign commerce, nor do I think there can be any doubt upon that point. Though the power to create corporations for these purposes is not one of the enumerated powers of Congress, it is nevertheless one implied from those granted. It is a power which has been exercised from the earliest times to the present. Marshall, C. J., in the case of McCulloch *v.* Maryland (4 Wheat., 316), in a most elaborate and able opinion held that this power was implied as one necessary to carry out other powers expressly given. The doctrine there laid down has been followed by the courts ever since, and is so well established that it is unnecessary to do more than call the attention of the committee to these leading cases: McCulloch *v.* Maryland (4 Wheat., 316); Osborn *v.* U. S. Bank (9 Wheat., 738); Luxton *v.* North River Bridge Co. (153 U. S., 525); California *v.* Pacific R. R. (127 U. S., 1); Wilson *v.* Sharo (Panama Canal Case, 204 U. S., 25).

If, then, that power exists, Congress has the power to enact the pending bill if it is in fact an agency or an instrumentality to regulate commerce with foreign nations or if it is necessary or proper for carrying into execution powers expressly granted under the Constitution to regulate commerce with foreign nations.

Gibbons *v.* Ogden (9 Wheat., 1): This case, the opinion in which was rendered also by Marshall, C. J., is so familiar to the distinguished members of this committee and has been so consistently followed by the courts that I merely call the committee's attention to it without quoting from it or citing later decisions which have followed the doctrines therein enunciated.

As indicating the length to which the Supreme Court has gone in conceding the broadest power to the commerce clause of the Constitution in regard to foreign commerce, I call the attention of the committee to the following cases: Butterfield *v.* Stranahan (192 U. S., 492), Lottery case (188 Id., 353), and Leisy *v.* Hardin (135 Id., 108).

In the first of these cases the court says: "Whatever difference of opinion, if any, may have existed or does exist concerning the limitations of the power resulting from other provisions of the Constitution so far as interstate commerce is concerned, it is not to be doubted that from the beginning Congress has exercised a plenary power in respect to the exclusion of merchandise brought from foreign countries; not alone directly by the enactment of embargo statutes, but indirectly as a necessary result of provisions contained in tariff legislation." It has also in other than tariff legislation exerted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion.

In conclusion, it seems to me that the proposed legislation may be sustained under the provisions of the treaties between the United States and China or under the commerce clause of the Constitution. A few slight amendments to the bill now under consideration, I think, will remove any doubts as to its purpose to aid or to assist in the regulation of foreign commerce.

If the committee desire in a general way to satisfy themselves as to conditions in China which make some such legislation necessary, I respectfully refer them to Arnold's Commercial Handbook of China, 1919, published under the Department of Commerce, and the China Year Book, 1919.

AMENDMENTS TO H. R. 4810 (CHINA TRADE ACT) SUGGESTED BY HON. GEORGE E. CHAMBERLAIN.

Insert in subsection (1), paragraph (c), page 3, line 12, after the word "engage," as follows: "and may purchase in China for transportation to the United States and other countries, or for resale in China, goods, wares, or merchandise necessary to the establishment or conduct of a business or enterprise in which it is authorized to engage."

Insert in section 5, paragraph (g), page 5, line 4, after the word "issued," the following: "until the incorporators or directors have presented to the Secretary of Commerce a certified appraisal of said property by at least three competent, disinterested appraisers, whose competency is acceptable to the Secretary of Commerce. The appraisers' report shall set forth to the satisfaction of the Secretary of Commerce."

Strike out in section 5, paragraph (g), page 5, line 4, the following: "unless the Secretary of Commerce finds."

Insert in section 9, page 7, line 22, after the words "Secretary of Commerce" the following: "is satisfied by evidence of the appraisers' report, as provided in section 5, subsection (g)."

Strike out of section 9, page 7, line 22, the following words: "finds and has certified to the corporation."

Insert in section 15, subsection (2), line 1, page 11, after the words "detrimental to the" the following words: "friendly commercial relations existing between the people of China and the people of the United States."

Strike out of section 15, subsection (2), page 11, beginning in line 1, the following words: "business interests and good will of the United States."

Insert in section 16, subsection (2), page 11, line 16, the following words after the words "detrimental to the": "friendly commercial relations existing between the people of China and the people of the United States."

Strike out of section 16, subsection (2), page 11, beginning in line 16, the following words: "business interests and good will of the United States."

APPENDIX.

STATEMENT OF HON. LEONIDAS C. DYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI.

Mr. DYER. Mr. Chairman and gentlemen of the committee, this bill is the result of some two years effort on the part of the Judiciary Committee of the House and of the Ways and Means Committee of the House. Originally, when the bill was presented, it was prepared by an official of the Federal Trade Commission, but the bill which is now before the Senate, which has passed the House, contains very little that was in the original bill. This bill has been written by the Judiciary Committee, as a committee, with the assistance of the Ways and Means Committee, so far as the revenue section is concerned. We worked upon it for some two years, through a subcommittee and otherwise, and last summer I had an opportunity to visit the Orient, and while I was there I took a great deal of testimony and made some investigation touching the matter at that time.

The object and purpose of this legislation is for one thing only, and that is to give to the United States an equal opportunity for entering into the trade of China. China is becoming one of the greatest markets in the world and the United States has been endeavoring and has succeeded to some extent in becoming a large factor out there. That has been so for many, many years, but the trade has dropped off, and it was not of any considerable proportion until the war came on and Great Britain, which had the great part of the trade, needed its resources, its men, its ships, etc., on account of the war and the United States was enabled to get into the trade. We have several hundred firms there now in China and they have built up a considerable trade. We have been able to send a great deal of goods out there, but conditions have arisen now which demand legislation if the United States is to be able to continue to hold even the trade, or a goodly portion of it that it now has. That comes about in this way: Great Britain has laws especially adapted for its trade with China. It has laws passed under what are known as the Hongkong ordinances which permit corporations to be formed for trade in China only and it exempts those corporations from all taxes. It even exempts to a great extent its individuals from income tax. This bill is not for the purpose of exempting any American from paying his income tax; its only purpose is the exempting of those corporations from paying corporation taxes which is now enjoyed by Great Britain and other countries that are engaged in that trade.

Great Britain has the bigger portion of the trade. Great Britain and Japan control, or have controlled up to the present time, largely all of the foreign trade, and this bill, as I have said, is only to provide a law under which Americans may operate in China. We want to make it so that it will be inviting to the Chinese to come in and take part with the Americans in the formation of these companies, that they may work together and in that way build up trade. For instance, the Chinese are establishing factories and mills and need machinery and things of that kind, and when they come in with Americans into those combinations, they buy the machinery and things that they need from time to time from America. When we find out, as we do know, that if they come in and form combinations with Americans they must pay corporation taxes upon those combinations on the money that they invest, it is not inviting to them because they can go to Great Britain——

The CHAIRMAN. Allow me to interrupt you there. I wish you would distinguish in order to make more specific what you mean by trade. As I remember it, from the hearings had by the House committee, and the report of the House committee, the export from the United States into China was greater during last year than the exports from Great Britain into China, and also greater than those of Japan into China.

Mr. DYER. Yes, sir.

The CHAIRMAN. Now, you do not mean, when you use the word "trade," the export or trade from the United States into China; you mean the trade that is going on in the interior of China?

Mr. DYER. Well, not so much, Mr. Chairman. The Americans who are out there engaged in business working for the development of China are making markets for American products—machinery and many other things that they use and need. They come from the United States, due to the demand created by the development of China. China is being developed now and they are going on to a great extent, more so than ever before, and Americans have been enabled to get into this trade considerably—in fact, we have been doing a great portion of it—and have been able to hold it to some extent, but as the war has ceased in Great Britain she is enabled to let loose her forces now in foreign trade, and she is resorting to everything to command that trade.

For instance, in times past when Americans went into those companies, they organized companies under the British law, because we had no law under which they could operate except under a charter by different States, and it gave them no advantage as compared with Great Britain, and they went in and organized under the British law, or to operate under the British law. But a year ago last March, I think it was, Great Britain in council issued an order which prevents Americans from continuing to occupy the position of managers and directors of these British corporations.

In other words, it issued an order that foreigners must get out of those positions and they must be taken over by Great Britain. As a result of that, some companies that were entirely financed by American capital, under the British law American managers have been compelled to go out.

The CHAIRMAN. I understand that, but I want you to make it perfectly clear, to me at least—it may be clearer to the other members of the committee—what your point is. I do not quite catch it, as far as this matter is concerned. A company organized under an act of this sort, as it is prepared, is for the purpose of doing business in China; it is not organized for the purpose of enlarging American trade with China, but it is organized for the purpose of doing business in China, and when it is organized, I assume it wants to make a profit, and it will buy where it can buy the cheapest, and I suppose will sell where it can sell the dearest.

Suppose it were building a railroad; there is no reason why it should buy its rails from the United States instead of Great Britain, and so with respect to all supplies, no matter what they might be; and I would like to know what there is in the bill that will insure the development of trade between the United States and China. Do you depend simply upon the loyalty and inclination of an American citizen to buy goods from his own country rather than from a foreign country, or have you in the bill anything that would have a tendency to increase the trade between our country and China?

Mr. DYER. Well, yes, sir; the bill, as I stated before, makes it possible for Americans to unite with the Chinese in developing the industries of China. That is a primary purpose.

Senator WALSH of Montana. I do not quite get that idea from this bill, Mr. Chairman. Subdivision b of section 4 provides:

"Such corporation may engage in any business or enterprise conducted wholly within China and carried on with persons in China"——

The CHAIRMAN. Well——

Senator WALSH of Montana. Just one moment, Mr. Chairman. Again, it says in subsection c:

"The corporation shall not engage in any business or enterprise other than that authorized by subdivision b, except that it may purchase in the United States for transportation to China, goods, wares, or merchandise necessary to the establishment and conduct of a business or enterprise in which it is authorized to engage."

I take it, then, that that, by implication at least, would forbid it to import goods, wares, and merchandise from any country except the United States.

The CHAIRMAN. But suppose there was an agency of a British company in Hongkong or Shanghai, do you understand that this bill would prevent a company organized under this act from buying its stuff from the agencies there of foreign countries, or would it be confined in its purchases to goods imported into China from the United States?

Senator WALSH of Montana. I feel this way about it, that the meaning of that would be that if an English branch house carried materials in stock in China, this company could buy that stuff in stock; but if it was to be issued from another company to the purchaser, it would be within the scope of this bill.

The CHAIRMAN. Mr. Dyer, do you understand the bill as Senator Walsh has just stated?

Mr. DYER. Yes, sir; that is the plan in a general way. For instance, during the past, British agencies have largely represented American firms as well as their own.

Senator WALSH of Montana. If you will pardon me, I was bothered about that for this reason: Here, for instance, is an American corporation doing business out there in China. They want to buy a certain quality of steel, a certain line of steel. The American exporter of steel fixes the price on it. The company can get that steel cheaper from Great Britain or from Germany than it can from the United States. Now, do you want to forbid them from buyingg where they can buy the cheapest and make them buy from a United States steel manufacturer no matter how much he asks them for the stuff?

The CHAIRMAN. You say they can buy cheaper from Great Britain?

Senator WALSH of Montana. I say I assume they can.

The CHAIRMAN. But it can not be done, of course.

Senator WALSH of Montana. I do not know about that. I simply instanced steel. But take any other commodity. He is an American corporation, established in Hongkong or in Canton. They have got to buy from the American exporter and have got to take h's figures. They can not entertain a proposition from anybody else. Is that you idea about it?

Mr. DYER. No, sir.

The CHAIRMAN. When I read the bill I was in doubt about that, but it seemed to me it probably would be construed, or would be, at least, administered so that the company organized under this act could buy anywhere.

Mr. DYER. Absolutely so. I think that is correct.

The CHAIRMAN. What I wanted to know was what you really meant by the word "trade"; whether your purpose really was to enlarge the export from the United States or whether it was simply to give an opportunity for American capital to go into China and try to make money there under the most advantageous circumstances.

Mr. DYER. As I stated before, this will probably answer the question, at least, indirectly: Heretofore, since the war, the British agents in China have been furnishing to the Chinese supplies, steel, machinery, and other things, obtaining them largely from America. We have had no agencies over there until practically since the war to handle this trade.

Great Britain has been furnishing them, because she had a means and method, and the law under which she could act and bought those things and made a commission on them. She has not helped America; in fact, when she saw that America had been getting in there on the trade during the war, she began immediately after the war and passed this order in council taking away the opportunity for Americans to work under the British law and to drive them out.

This bill has one purpose; you gentlemen may not agree with it in all respects. I have no criticism, but, of course, if you can offer anything to better the bill, it will be perfectly satisfactory. We want to make it a bill that will do absolutely what we want it to do—give the United States an equal chance to trade in China with other countries and at the same time protect the commerce of the United States absolutely and entirely.

Senator BRANDEGEE. What I want to find out is this: Of course, I do not know anything about what is in the minds of the people who are in favor of this bill, what they want to accomplish, except what you state here, and from what is in the bill. Now, as Senator Walsh has said, this subdivision b, at the top of page 3, provides as follows:

"Such corporation may engage in any business or enterprise conducted wholly within China and carried on with persons in China, except that the corporation shall not engage in any business or enterprise unlawful in the territory in which it is carried on."

Now, subdivision c provides:

"The corporation shall not engage in any business or enterprise other than that authorized by subdivision b."

That prohibits them from doing anything outside of China, as I would think, except that it "may purchase in the United States for transportation to China goods, wares, or merchandise necessary to the establishment and conduct of the business or enterprise in which it is authorized to engage," which is described, as heretofore stated, in subsection b, that it is to be business within China, and yet it may import merchandise from the United States to conduct that business. That would seem to me to provide clearly that a corporation organized under the provisions of this act, transacting its business within the Chinese Empire completely, can import from America anything it wants to to be sold by them in China. There is nothing in the bill, as I see, that would prevent them from importing from any other country they wanted to for the purpose of selling again in China. That is their business.

The CHAIRMAN. That was my impresssion of the bill, although it is not entirely clear.

Senator BRANDEGEE. Is that your interpretation? In other words, to clear it up in my own mind, while this would seem by certain provisions here to confine this corporation, as a national or Federal corporation of the United States, to activities within the Chinese Empire, if what I have said to you heretofore is the correct construction of the bill, they can do a world-wide business so far as importing stuff into China is concerned. They can import from any country, and hence it is not confined to China, although it might appear from one provision of the bill that it was.

The CHAIRMAN. But its imports, though from other countries, would have to be sold in China for the use of China in the construction of some property.

Senator BRANDEGEE. Yes; or in the business which the corporation was organized to perform, whether it was the development of mines or railroads or excavating rivers and harbors and all sorts of great industrial enterprises.

They can organize to conduct any and every kind of business. Now, if the Secretary of Commerce approves that, then, as I would think, they can import into China from all the world, and if they can in what respect does it promote trade between America and China?

Senator WALSH of Montana. Before you consider that, Mr. Dyer, permit me to say that I do not take that view of it. I take the view, from subdivision No. 1 of subsection c, which says:

"May purchase in the United States for transportation to China goods, wares, or merchandise necessary to the establishment and conduct of a business or enterprise in which it is authorized to engage"—that it is necessarily implied that it can not import from others—so you will observe that there is a division of opinion right in the committee here with respect to what it is to do. Now, what we want to find out from you is what it is that you want us to do.

Senator BRANDEGEE. I agree, Senator Walsh, perfectly that that is the construction to be placed on it, that giving them authority to import from the United States might be held to exclude them from importing from any other country into China. But we want to know what they want to accomplish, and then we can frame the proper language.

The CHAIRMAN. Senator Walsh, there is some reason for the interpretation you put upon that act, but after all it would be a technical matter that could be easily avoided. The corporation could buy in China goods that had been imported from other countries——

Senator WALSH of Montana. Exactly.

The CHAIRMAN. So that after all it would amount to the same thing; the corporation would be there to do business in China and would not be confined to goods made in America. It could buy its goods anywhere. So it seems to me that the bill as it is framed means simply to give an opportunity to American capital to do business in China profitably and safely instead of being a bill to promote, protect, or enlarge the exports of the United States into China.

Mr. DYER. I think, Mr. Chairman, that the purpose of the legislation—at least that was the intention of our committee—was to assist in making a market in China for American goods and to increase our goods to be sent to China.

The CHAIRMAN. But this company would not buy American goods unless it could buy them more cheaply here than it could buy them anywhere else.

Mr. DYER. I am told that it would, because these companies must be American companies and must be controlled by Americans over there, and are now even where they incorporate under the laws of the different States in every instance, even to the disadvantage of the Americans sometimes in getting goods from the United States.

The CHAIRMAN. That would be loyalty to the general interests of the United States at the expense of the protection of the corporation itself?

Senator BRANDEGEE. Would not the whole thing in its operation depend on the control of the American corporation that was doing business in China? If it were controlled by large producers in this country, of course they would purchase themselves if they could do it as cheaply. But suppose the corporation is not allied with any local industries in this country but is a trading corporation over there and wants to get its supplies as cheaply as possible in order to make dividends for its stockholders, then it can buy, if it is at liberty to do so under this bill, in the cheapest market in the world.

Mr. DYER. The things they need over there are things the United States can furnish.

Senator WALSH of Montana. Let us see what it is that you want to accomplish by this bill.

Senator BRANDEGEE. Would you be willing—or the geneltmen who want to get this bill passed, whoever they are—would you be satisfied to provide that this corporation incorporated to trade in China shall not purchase goods anywhere except in the Untied States?

Mr. DYER. If it can be done, I see no objection to it.

Senator BRANDEGEE. And is that the intention in the minds of the proponents of this bill?

Mr. DYER. Mr. Powell, who is a resident of Shanghai—but who is from my State originally—probably can give you an idea as to that. He publishes a paper in Shanghai, but is here on a visit and I have asked him to come to Washington.

The CHAIRMAN. I want to make one other suggestion before he begins, because that point is very closely connected in my mind with the authority and power of the United States to organize, or to provide for the organization of such a corporation.

Mr. DYER. Yes; there is some question about that. It is the intention to make a market for American goods, and they are doing it and will do it. They are as fine a lot of Americans as I have ever seen over in China; high class, splendid Americans.

Senator BRANDEGEE. Before this gentleman begins, let me ask you one question. In reading the hearings that were held before the House Committee on the Judiciary on a bill of a similar nature to this, I find on page 47 that Mr. Seitz in making a speech at a reception that was given to some party of Americans, Senators and Congressmen, used language about the exemption of those organizations from taxation, etc., and he referred to the guests he was entertaining as a committee of Congress. Who were the gentlemen and what was their mission?

Mr. DYER. It was no committee. A number of Congressmen, including Senators Harris and Sterling, visited the Orient last summer. I had a bill pending in the Committee on the Judiciary and while I was there they asked for an opportunity—and I was glad myself to avail of it—to hear these gentlemen upon this question. That was when the testimony was taken.

Senator BRANDEGEE. He states as follows:

"We have amongst us to-day some of the most influential representatives amongst our lawmakers in Washington, and we hope you will take to heart what we, as the leading organizations representing trade in China, have told you here. If you will carry back to your colleagues in Washington the importance of the message which we desire to convey and thereby help to have Federal incorporation laws for American companies in China granted, you will be conferring an inestimable benefit on American trade."

Mr. DYER. At the time I was chairman of the subcommitttee on the judiciary, which was considering this bill, and I took this testimony and presented it to them, and that is the way it happened.

There is no one else, Mr. Chairman, here who desires to speak, except Mr. Powell, who is connected with a magazine, a large far eastern review of Shanghai, and two gentlemen who worked with him on the Judiciary Committee trying to look up the law in order to write the proper bill in the legislative drafting service of the House, and Mr. Eldridge, who is the chief of the division of the

Department of Commerce dealing with far eastern affairs, and Mr. Dodson, who represents the Chamber of Commerce of Portland, Oreg. I will introduce Mr. Powell.

STATEMENT OF J. B. POWELL.

Mr. POWELL. Mr. Chairman, my chief business in Shanghai is editor and publisher of an American weekly newspaper or newspaper, Millard's Review of the Far East, printed in the English language. I have lived in China for approximately four years. In addition to that work, I have acted, since I have been out there, as secretary of the American Chamber of Commerce of Shanghai. That is an organization which in 1915 was originally organized with about 48 members. About one-half of those members, I think, are corporations, firms, and companies and the remainder individuals. This chamber now has a membership of about 300, or a little better than 300—315—and practically all of these firms are small companies which have gone into Chinese trade since the beginning of the war. I have a list of them here, giving their home offices. They are scattered all over the United States.

The CHAIRMAN. If you will furnish that list to the reporter, it will be inserted in the record.

(The list referred to is here printed in full, as follows:)

LIST OF LOCAL MEMBERS.

American Chinese Drug Co., drugs, general merchandise, import and export, Chungking, China.
American Drug Co., drugs, chemicals, 40–42 Nanking Road, Shanghai.
American Egg Drying Co., egg drying and export, Lombard and Battery Streets, San Francisco.
American Express Co., express and freight, bankers, New York.
American-Oriental Banking Corporation, banking, care of Irving National Bank, New York.
American Trading Co., import and export, 25 Broad Street, New York.
Amos Bird Co., egg products, 72 South Market Street, Boston.
Andersen, Meyer & Co., general and commission merchants, 80 Wall Street, New York.
Arkell & Douglas, import and export, 44 Whitehall Street, New York.
Asia Banking Corporation, banking, 66 Liberty Street, New York.
Ault & Wiborg Co., printing ink and supplies, Cincinnati, Ohio.
Carter, Macy & Co., tea exports, 106 Water Street, New York.
China Electric Co., manufacturers telephone systems, jobbers, 195 Broadway, New York.
China General Edison Co., electrical materials, Schenectady, N. Y.
China, Japan & South American Trading Co., import and export, 89 Maiden Lane, New York.
China & Java Export Co., hides and skins, 97 Gold Street, New York.
China Pacific Commercial Co., import and export, 149 California Street, San Francisco.
China Press, newspapers, Shanghai.
Chinese-American Co., import and export, 200 Devonshire Street, Boston.
Chinese-American Publishing Co., booksellers, publishers, Rochester, N. Y.
Christenson, Hanify, and Weatherwax, import and export, 210 California Street, San Francisco.
Commercial Pacific Cable Co., cables, 253 Broadway, New York.
Connell Bros. Co., import and export, 77 Marion Street, Seattle.
Dodge & Seymour, import and manufacturers' agents, 11 Broadway, New York.
Robert Dollar Co., lumber and shipping, 230 California Street, San Francisco.
E. I. du Pont de Nemours Explosives Co., chemicals, dyes, etc., Equitable Building, New York.
J. H. & C. K. Eagle, silk manufacturers, 265 Fourth Avenue, New York.
L. Everett, import and export, Shanghai.
Far Eastern Review, monthly engineering journal, care of J. Roland Kay, Chicago.
Fearon, Daniel & Co., import and export, 99 Wall Street, New York.
Fenner, Ross & Brown, import and export, Seattle.
Flemming, Davies & Bryan, attorneys at law, Shanghai.
Fobes Co. (Ltd.), machinery, Shanghai.
Foster-McClellan Co., manufacturing chemists, 1280 Main Street, Buffalo.

Frazar & Co., import and export, Shanghai.
Gaston, Williams & Wigmore, import and export, 39 Broadway, New York.
Getz Bros. & Co., general import, San Francisco.
Gillespie & Sons (Hankow, China), export wood and bean oil, 6–8 Fletcher Street, New York.
Grace China Co., importing, export, shipping, Hanover Square, New York.
A. R. Hager, international correspondence schools, Scranton, Pa.
Robert H. Ingersoll & Bro., watch manufacturers, 315 Fourth Avenue, New York.
International Banking Corporation, banking, 55 Wall Street, New York.
Jernigan, Fessenden & Rose, attorneys at law, Shanghai.
Klauber Trading Corporation, import and export, New York City.
The Koster Co., barrels, cooperage, shooks, 433 California Street, San Francisco.
Edward Maurer Co., import and export, 80 Maiden Lane, New York.
Millard's Review, weekly trade, finance journal, Caldwell-Burnet Corporation, 101 Park Avenue, New York.
Murphy & Dana, architects, 231 Madison Avenue, New York.
Mustard & Co., importers, care of British-American Tobacco Co., 200 Fifth Avenue, New York.
Nafra Co. (Inc.), import and export, ship owners and operators, 120 Broadway, New York.
National Aniline & Chemical Co., aniline dyes, indigo, chemicals, 21 Burling Slip, New York.
Pacific Coast Steel Co., steel, import and export, 532 Rialto Building, San Francisco.
Pacific Mail Steamship Co., shipping, San Francisco.
Park-Union Foreign Banking Corporation, banking, 55 Wall Street, New York.
Philippine National Bank, banking, 37 Broadway, New York, and Manila, P. I.
Pressed Steel Car Co., freight and passenger cars, Pittsburgh, Pa.
Rogers, Brown & Co., export and import vegetable oils, Seattle, Wash.
A. B. Rosenfeld & Son, cotton dealers, Shanghai.
Saco-Lowell Shops, cotton-mill machinery, Boston, Mass.
Thomas W. Simmons & Co., import and export, San Francisco.
Singer Sewing Machine Co., sewing machines, New York.
Squires Bingham Co., general retail, 17–A Nanking Road, Shanghai.
Standard Oil Co. of New York, petroleum products, 26 Broadway, New York.
Charles T. Stork & Co. (Inc.), import and export, 135 Front Street New York.
James D. Sullivan, candies, wholesale and retail, 11 Nanking Road, Shanghai.
The Texas Co., petroleum products, 17 Battery Place, New York.
A. F. Thane & Co., lumber merchants, import and export, San Francisco.
Tobacco Products Corporation, tobacco, cigarettes, 1790 Broadway, New York.
Trans-Pacific Corporation, import and export, Portland, Oreg.
United States Rubber Export Co., manufacturers of rubber goods, 1790 Broadway, New York.
United States Steel Products Co., products of United States Steel Corporation, 30 Church Street, New York.
United States Trading Corporation, import and export, 51 California Street, San Francisco.
Villa Bros., of Shanghai, raw silk, export, 95 Madison Avenue, New York.
Viloudaki & Co., chemicals, silk goods, importers and exporters, Shanghai.
Wah Chang Trading Corporation, import and export, Woolworth Building, New York.
J. C. Whitney Co., tea exporters, 437–451 West Ontario Street, Chicago.
Willits & Patterson, import and export, vegetable oils, 1 Drumm Street, San Francisco.
P. F. Wisner & Co., importers and exporters, New York.
Youroveta Home & Foreign Trading Co. (Inc.), import and export, 130 Broadway, New York.

NONRESIDENT MEMBERS IN AMERICA.

Allis-Chalmers Manufacturing Co., manufacturers of flour mill, mining, and electrical machinery, Milwaukee, Wis.
American Aniline Products (Inc.), manufacturers of dyestuffs, chemicals, etc., 80 Fifth Avenue, New York.
American Car & Foundry Co., railroad equipment, 120 Broadway, New York.

American International Corporation, finance, construction, 120 Broadway, New York.
American Rolling Mill Co., structural steel, Middletown, Ohio.
American Woolen Products Co., woolen piece goods, 235 Fourth Avenue, New York.
Armour & Co., packers, manufacturers, Chicago.
Art Metal Construction Co., steel office furniture, etc., Jamestown, N. Y.
Baldwin Locomotive Works, locomotives, Philadelphia, Pa.
C. C. Belknap Glass Co., glass manufacturers, 1900 Railroad Avenue, Seattle.
Bemis Bag Co., bags, 40 Central Street, Boston.
Bucyrus Co., manufacturers of excavating machinery, South Milwaukee, Wis.
Burroughs Adding Machine Co., adding and calculating machines, Detroit, Mich.
California Barrel Co., cooperage manufacturers, export, 433 California Street, San Francisco.
California Corrugated Culvert Co., culverts, Fifth and Parker Streets, West Berkeley, Calif.
California Packing Corporation, canned products, 101 California Street, San Francisco.
California Paint Co., paints, oils, varnishes, Eleventh, Twelfth, and Pine Streets, Oakland, Calif.
California Sugar & White Pine Co., lumber merchants, First National Bank, San Francisco.
W. J. Cassidy, manufacturers vegetable oils, 65 Broadway, New York.
Chicago Pneumatic Tool Co., manufacturers pneumatic tools, electric tools, air compressors, 343 South Dearborn Street, Chicago.
Clyde Equipment Co., import and export, 542 First Avenue, South, Seattle.
Commercial Union of America, import and export, 25 Beaver Street, New York.
Dant & Russell, lumber merchants, Portland, Oreg.
Darling & Co., hides, bones, fertilizers, Union Stock Yards, Chicago.
Dill-Crosett (Inc.), import and export, 235 Pine Street, San Francisco.
Domestic Engineering Co., Delco light, Dayton, Ohio.
Equitable Trust Co., banking and exchange, 37 Wall Street, New York.
Erie City Iron Works, manufacturers steam engines and boilers, Erie, Pa.
Fairbanks, Morse & Co. (Inc.), railway supplies, 30 Church Street, New York.
Farley Candy Co., manufacturers of candies, 720 North Franklin Street, Chicago.
French Kreme Co., egg yolk, albumen and all food lines, 291 Broadway, New York.
F. W. Frost & Co., import and export, 60 Wall Street, New York.
Fur Merchants Association, furs, 218 Fifth Avenue, New York.
General Electric Co., electrical manufacturers, Schenectady, N. Y.
Gillespie Bros. & Co., exporters, No. 11 Broadway, New York.
W. & L. E. Gurley, mining, marine, survey engineers, Troy, N. Y.
Hammond Typewriter Co., manufacturers typewriters, Sixty-ninth Street and East River, New York.
Hart Manufacturing Co., manufacturers of mechanics' tools, Cleveland, Ohio.
Herring-Hall-Marvin Safe Co., safe manufacturers, 400 Broadway, New York.
Howe Scale Co., scales manufacturers, 341 Broadway, New York.
Imex Corporation, import and export, 25 Beaver Street, New York.
Imperial Candy Co., manufacturers, Seattle.
Ingersoll-Rand Co., manufacturers of compressed-air machinery, New York.
Innes & Co., import and export, 132 Front Street, New York.
Leon Israel & Bros., importers and exporters, 101 Wall Street, New York.
S. L. Jones & Co., import and export, 209 California Street, San Francisco.
Knapp & Baxter, import and export, No. 2 Pine Street, San Francisco.
Langley & Michaels Co., wholesale drugs, 42–60 First Street, San Francisco.
William A. Lee, president board of trade, Augusta, Ga.
MacDonald & Co., shipping and commission, 454 Montgomery Street San Francisco.
Marshall–Wells Co., hardware and iron merchants, Portland, Oreg.
R. Martens & Co. (Inc.), exporters and importers, 6 Hanover Street, New York.
McConway & Torley Co., manufacturers Janney couplers, Forty-eighth and A. V. Railway, Pittsburgh, Pa.

J. A. Migel (Inc.), manufacturers silk products, 422 Fourth Avenue, New York.
G. A. Miller, import and export, 123 Front Street, New York.
Montgomery Ward & Co., wholesale, mail-order, Chicago.
Geo. H. Morrill Co., printing inks, carbon black, New York.
David L. Moss & Co., import and export, 60 Wall Street, New York.
Muller, MacLean & Co., exporters, No. 11 Broadway, New York.
E. A. Muns Kalsomine Co., kalsomines, 217 Fulton Street, Brooklyn, N. Y.
National Lead Co., manufacturers of paints, 385 California Street, San Francisco.
Oppenheimer Casing Co., sausage casings, 1020–28 West Thirty-sixth Street, Chicago.
Overseas Shipping Co., shipping and forwarding, 322 South Michigan Avenue, Chicago.
Pacific-American Trading Co., import and export, 112 Market Street, San Francisco.
Pacific-Orient Co., import and export, 16 California Street, San Francisco.
Pacific Shipping & Fuel Co., wholesale coal, 659 Colman Building, Seattle.
Packard Motor Car Co., manufacturers motor cars and trucks, Detroit, Mich.
The Paraffine Cos., paints and oils, 34–40 First Street, San Francisco.
Peet Bros. Manufacturing Co., manufacturers of soap, Kansas City, Kans.
Perine Machinery Co., ship building, iron, and steel, 209 First Street, Seattle.
W. Phillips & Co., import and export, 1098 Sansome Street, San Francisco.
Portland Chamber of Commerce, manufacturers and merchants, Portland, Oreg.
Procter & Gamble Co., soaps, oils, chemicals, Sixth and Main Streets, Cincinnati.
Remington Typewriter Co., typewriters, office supplies, New York.
Rendrock Powder Co., blasting powder, 106 Wall Street, New York.
Rolph, Mills & Co., import and export, Monadnock Building, San Francisco.
Schwabacher Hardware Co., wholesale hardware, First Avenue South and Jackson Street, San Francisco.
Scott, Sugden & Lamont, import and export, 343 Monadnock Building, San Francisco.
Seattle Chamber of Commerce, manufacturers and merchants, Seattle.
C. Henry Smith, import and export, California and Battery Streets, San Francisco.
Smythfield Export Co., exporters and importers, 1216 Arch Street, Philadelphia.
C. Solomon, jr., import and export, 314 Battery Street, San Francisco.
Southard Robertson Co., stoves, ranges, 257–259 Water Street, New York.
Steel Hoop & Heavy Hardware Co. (Inc.), distributors for Acme Steel Goods Co., 295 Broadway, New York.
John Steptoe Co., machine-tool builders, Cincinnati, Ohio.
Tait & Nordmeyer Engineering Co., engineers, International Life Building, St. Louis.
Thomas & Co., importers oils, oil seeds, 1209 American Bank Building, Seattle, Wash.
The Trans-Pacific, magazine, Japan Advertiser Building, Tokyo.
Truscon Steel Co., reinforcing and structural steel, Youngstown, Ohio.
Union Oil Co. of California, oil products, Mills Building, San Francisco.
A. P. Villa & Bros., raw silk import, 95 Madison Avenue, New York.
Westinghouse Electric Export Co., electrical manufacturers, 165 Broadway, New York.
The Widlar Co., teas and spices, 722–40 Bolivar Road, Cleveland, Ohio.
Willits & Co., import and export, 16 California Street, San Francisco.
Zellerbach Paper Co., paper, printers' supplies, San Francisco.

Mr. POWELL. You will notice that that list is divided into what we call local corporations members—that is, firms with offices in Shanghai, and actual representatives there. It shows also the individual members, and we have a foreign membership, which includes a manufacturer who is selling goods in China and who pays us a small fee because of his interest in that field, and we mail him our bulletin, which goes out once a month, about trade conditions in that part of the world.

I think I should first answer the question that was brought up about where these firms would buy. One of these—I should say the most important feature in the foreign-trade development of any country is the personnel of that coun-

try in the foreign field. That is the big thing. Americans push American goods, the British push British goods, and the Germans push German goods, and so on down the line to the nth degree. You do have cases where an American may be interested in pushing material from other countries, but it is an exception and not the rule at all.

Now, there is another feature. As it is now there is nothing, of course, to force any of these companies that are out there operating under State charters to buy any goods at any specific place. They can buy wherever they please, provided they can get an agency in England or elsewhere. But where they do the biggest part of their business with countries outside of the United States they can not get American consular protection. I do not know whether there is any law or regulation that forces the United States or the State Department to protect American firms in the foreign field, when these firms do most of their business in goods not originating in the United States.

Senator WALSH of Montana. I do not understand what you mean when you state it can not get consulate protection.

Mr. POWELL. I will take up one case. I know an American firm in Shanghai which handles cotton goods manufactured in England. At one time we had the big part of that business in China, and it was very great. I will tell you that England, for instance, sells more in that one line than we do in a dozen lines in China. We had that business once, but we lost it. Now, this firm dealt originally in this American piece-goods business, but when we lost that market and the business went against us this firm got some agencies in England. I think a year ago, or at least since I have been secretary of the American Chamber of Commerce, this firm got into trouble because the Japanese imitated the trade mark on this English line; so they went to the American consulate for protection.

Senator WALSH of Montana. Protection how?

Mr. POWELL. They wanted to bring an action against those Japanese for imitating this trade-mark. The American consulate said, "No; it is a British line and we can not do anything for you."

Senator BRANDEGEE. I am anxious to know what you want put in the bill. Do you want these corporations to have authority to import into China from any country they please?

Mr. POWELL. I should think a company in order to be successful would have to have that power, of course. What we want is for them to buy in America and spend every dollar here they can.

Senator BRANDEGEE. If they can get it at the same price?

Mr. POWELL. Yes, sir.

Senator BRANDEGEE. But suppose under the bill a corporation is organized over there, and suppose it gets a contract from the Government of China to establish some system of irrigation, or canals, which would involve an expenditure comparable to what we spent on the Panama Canal. Now, Americans may push American trade, other conditions being equal, but won't they buy where they can buy the cheapest, so as to make the most money for their stockholders under that contract?

Mr. POWELL. I do not think we could get American protection in those contracts. If this company buys things—if they are large things, such as you suggest—the contracts have to be approved by the American legation to be legal, and I do not think the American legation would do that to any great extent if the company dealt in non-American materials.

Senator BRANDEGEE. But you say that the American legation would compel all these companies to buy their stuff in America; and if so, why would it not be just as well to put it in the bill?

Mr. POWELL. I do not know whether they would compel it, but they would not be very enthusiastic about supporting them in actual practice if their business was with countries outside of America.

Senator BRANDEGEE. You say they would not approve it unless it was what?

The CHAIRMAN. Who would not approve it?

Mr. POWELL. The American Legation. They would not approve a business the substantial interest of which was not American.

The CHAIRMAN. What has the American Legation got to do with it?

Mr. POWELL. They have to approve the contract. We live in China under our own laws, and all our activities out there are subject to American laws as administered by our court in China and by our consular and diplomatic officers in that country.

The CHAIRMAN. If we pass this bill it will be a part of the law administered in China?

Mr. POWELL. Yes, sir; this comes under our jurisdiction. We can not operate except under our own law. We are subject to our own jurisdiction.

Senator BRANDEGEE. Do you think it would promote international trade between America and China if we should pass this bill just as you have drawn it, with the restrictions that these corporations should not import goods into China from any country except America; do you think that would do it?

Mr. POWELL. I do not know about the actual operation of it.

Senator BRANDEGEE. Would the companies operate?

Mr. POWELL. For instance, our competitors—using it against us that we were bound in this way—might exploit the fact that our prices might be higher.

Senator BRANDEGEE. But I do not seem to be able to get an answer to my question whether the proponents of this bill want to limit the imports to goods brought from America or whether they want to have the right to buy all over the world.

Mr. POWELL. I should say that it should be limited as far as possible to America, if it can be done without injuring the business of the firm out there.

Senator BRANDEGEE. Can it be done without injuring it; that is what I want to know? You know all about business conditions over there and I do not. It would seem to me that as this corporation doing business in China did not buy in America it would not tend to promote trade with America, whereas if they are confined to purchasing from America it would not seem to me that they could compete with other people who are at liberty to buy from Japan or any cheaper market, and I want some information on it. I want to know what you want us to put in the bill, and then we will decide the matter.

Mr. POWELL. If it could be legally done, if these companies could be forced to buy in no other place than America, I should say it would be a very good thing, providing, of course, that this would not injure the firm in its competition.

The CHAIRMAN. What do you think of a company that was organized in the United States that was limited to purchases in goods bought out of the United States; do you think you could get any capital invested in a company like that?

Senator WALSH. If you will pardon me, Mr. Chairman, I want to inquire if you would be able to get Chinese capital associated with you?

Mr. POWELL. Yes, sir; to a certain extent.

Senator WALSH of Montana. Now, if you put such a limitation as that in the bill and Chinese capital has an opportunity to go into English companies, which are authorized to buy anywhere, or they can go into an American company that is authorized to buy only in the United States, would you think the bill under those circumstances would be inviting to Chinese capital?

Mr. POWELL. No, sir; it would not.

Mr. DYER. And the British do not have it in their law.

Senator BRANDEGEE. Now, on the other hand, if it is not put in, how is it going to help American trade with China?

Mr. DYER. Well, they buy things, and are doing it now, in America that they can possibly find a market for in Great Britain. They buy nothing from any other country unless it can not be had from America. That is the absolute fact.

Senator CHAMBERLAIN. May I ask a question?

The CHAIRMAN. Certainly.

Senator CHAMBERLAIN. Is it not true that American manufacturers competing for business over there sell goods cheaper in China than they do in the United States?

Mr. DYER. That I do not know.

Mr. POWELL. What is the question?

Senator CHAMBERLAIN. I am speaking of these American manufacturers competing for business over there, that ship goods to China—do not the agents sell the goods cheaper there to customers than they do in the United States?

Mr. POWELL. I think probably not the same quality of goods, but there has been a habit in the past of dumping some of our cheaper or "second" stuff into a foreign market where it sells cheaper.

Senator CHAMBERLAIN. I thought competition had a good deal to do with the prices.

The CHAIRMAN. Suppose you were putting up a cotton mill there, you do not mean to say it would prevent this company from using Egyptian cotton, or our own people from using Egyptian cotton here to a degree.

Mr. POWELL. That is quite true of an American company if you limit it to this country.

The CHAIRMAN. I do not think you could get any capital into it at all.

Mr. POWELL. But in the actual application there is no question but that Americans push American materials clear down the line. It is a most important function and principle in foreign trade that the big part of it depends on your own personnel that is there on the job all the time.

Mr. DYER. Mr. Chairman, I think Mr. Eldridge could give you some facts with respect to this matter.

STATEMENT OF MR. T. R. ELDRIDGE, DEPARTMENT OF COMMERCE.

Mr. ELDRIDGE. Mr. Chairman, I would like to answer that one question right now. The bill provides, "conducted wholly within China and carried on with persons in China." Now, under that wording it would be perfectly possible for American corporations under this act to buy foreign merchandise from a foreign agent in Shanghai. So that, in fact, it would limit them to purchasing in the United States.

The British may have an agent, say, for Egyptian cotton at Shanghai who is operating their business in China. They could buy that cotton from a British agency.

Senator BRANDEGEE. Why would it not, then, from your point of view, be better to strike out that provision which gives you authority to import from the United States into China? Why do you leave it in there? Would it not be better to say that you can import from any country that you want to and remove the restriction?

Mr. ELDRIDGE. Because it prevents those corporations operating under this act from engaging in direct trade with foreign countries. In other words, it prevents Americans going to China and incorporating under this act and conducting most of their trade directly with Great Britain and with Germany or with Egypt or India.

Senator BRANDEGEE. Then take Senator Walsh's view of it, that express authority to import only from the United States excludes the power to import from any other country, does it not?

Mr. ELDRIDGE. It excludes the power to import directly from any other country, and therefore it prohibits trade with any other country under certain limitations as compared with the trade of the United States.

Senator BRANDEGEE. That is your intention, is it?

Mr. ELDRIDGE. That is the intention of the law.

Senator BRANDEGEE. Why do you not say, then, that such corporation shall not have authority to import from any other country except the United States, making its function perfectly clear and not leave it to speculation, which is now div'ded in this committee?

Mr. POWELL. I think I might have something definite on that. I may say that I know a little bit about business conditions in China. Suppose I have a Chinese friend in Shanghai, a young man who has been educated in this country. He has gone back to China. He has a little capital with which he wants to go into business with me. He would put up some money, and I would put up some money, and we would organize an American company with the idea of manufacturing cotton goods. I am going to see that that cotton machinery comes from the United States.

Senator BRANDEGEE. It is not a Chinese question or a question of how things have heretofore been accomplished there. What I want to know is, what shall we put in this bill; what do you want us to do; what power do you want this corporation to have, and what limitation do you want put upon it. I want to know if the language in the bill is calculated to carry this intention into effect.

Mr. POWELL. We want a bill that will put an American company in China that will have the facilities for doing business on an even basis with an English competitor across the street who is competing with us, because if we are not out there he is going to have all the trade and switch it to England if he can.

Senator BRANDEGEE. Of course, I understand that, and therefore you want exemption from income tax. That is the specific thing. I can understand that proposition, but I do not understand what we have just been discussing, and I hope that before the hearing is concluded some one will be able to penetrate my brain on the subject, at least so that we may undersfand properly the language in the bill.

Mr. DYER. I will ask Mr. Lee to answer that question for you. For many weeks he took notes at the committee hearings in the House.

Senator BRANDEGEE. You mean as to what the question is in the minds of the people? I think I can understand the language in the bill, and I think I can understand that there is some doubt as to what the proper interpretation of it is. What I want to get at is what these people want to be authorized to do.

STATEMENT OF MR. F. P. LEE, ASSISTANT DRAFTSMAN, LEGISLATIVE DRAFTING SERVICE, HOUSE OF REPRESENTATIVES.

Mr. LEE. Mr. Chairman, corporations as a matter of law have only the powers expressly given to them. Other powers are prohibited to them. Therefore, as Senator Cummins and Mr. Eldridge pointed out, one of these Federal corporations may, with certain exceptions specified in the bill, engage only in business in China.

Now, as to Senator Brandegee's point, the corporation may not import articles from France to China, for instance; but it is not prevented from buying French articles from a French agent in China. The Judiciary Committee did not want this act to become a guise for a Federal corporation engaging in business principally in France, for instance, or in the United States, and yet the committee did not want to, nor could it practically, cut off the corporation entirely from obtaining French goods. So the language of the bill was intended to permit the purchase of French goods in China from a French agent, but not the importations; that is, the purchase in France of a French article and the bringing of it to China.

On the other hand, as to the United States, the committee thought, as I understood it and was instructed, that it was advisable to observe a distinction advocated by the Department of Commerce, namely, to permit the purchase of goods in the United States (that is, not to have to buy from the agent in China of the United States firm, but make a purchase directly and bring the goods to China); but on the other hand it was inadvisable that the corporations should be able to import into the United States and sell in the United States, or rather export from China into the United States and sell in the United States. That business must be done through an agent in the United States or through a subsidiary or parent corporation incorporated under State law and not under this proposed act.

Senator BRANDEGEE. I thought section (b) limited you to doing business in China and not in the United States?

Mr. LEE. Yes. In other words you may not export from China into the United States and sell there; but paragraph (1) of subdivision (c) of section 4 permits you to purchase in the United States and transport to China and sell.

Senator BRANDEGEE. But you have been talking about exporting from China to the United States. Nobody wants to do that, do they?

Mr. LEE. I am also talking about importing from the United States into China. Take the A. B. C. Co. in China. It may purchase an article in New York and take it to Shanghai and sell it there. On the other hand, it may not take an article originating in China and transport it to New York and sell it in New York, but it may only sell it in Shanghai to the agents of the New York firm, which in turn will transport it to New York.

Mr. BRANDEGEE. Do you think under this bill as it is drawn, any of these corporations organized to do business in China could export anything to the United States?

Mr. LEE. It can export nothing to the United States unless under paragraph (3) of subdivision (c) it has specific authority with the approval of the Secretary to engage in business in the United States incidentally to its business in China.

Senator BRANDEGEE. Do you mean to say that with the approval of the Secretary of Commerce this corporation could export the products of Chinese labor over here and go into that business?

Mr. LEE. With the approval of the Secretary of Commerce they may do business in the United States—anything that is "necessary to the establishment and conduct of any business or enterprise in which it (that is, the corporation) is authorized to engage."

The CHAIRMAN. I think they can do it without that power.

Mr. DYER. It is merely incidental.

Senator BRANDEGEE. As I understand you, you intend to prevent these companies starting to do business within China; you intend to prevent them from importing as companies themselves from any foreign country except the United States?

Mr. LEE. That is what I have understood the Judiciary Committee intended.

Senator BRANDEGEE. Of course, I can understand that there is nothing in the bill that will prevent a corporation in China from buying stuff in China that somebody else there would import into China. Where an agent of a foreign country brought stuff there, there is nothing in the bill that would prevent this corporation buying that stuff or from making a contract with somebody that the other fellow should import stuff into China——

Mr. LEE. Yes, sir; precisely.

Senator BRANDEGEE. That would be rather whipping the devil around the stump.

Senator WALSH of Montana. Whether you have expressed it accurately or not, it was your purpose to limit the importing business to imports from the United States?

Mr. LEE. Yes, sir; that is the purpose the language of the bill is intended to carry out.

Senator WALSH of Montana. As to goods from any other place, they must buy, if they buy them at all, from somebody in China, and can not buy in the other countries and bring them in?

Mr. LEE. Yes, sir.

Senator BRANDEGEE. What do you think there is gained from letting them purchase English-made goods from an English selling agent but not letting them import direct from Great Britain? As a matter of fact, what is the difference? The money of this corporation goes to the British producer just the same, does it not; and American goods are not used, but the British goods are?

Mr. LEE. As a draftsman, I am not qualified to answer that question of policy, Senator; except that I can say it is obvious from the provisions of the bill that such a restriction operates more effectively to limit the tax exemption and the protection of the flag to business in China.

The CHAIRMAN. Mr. Lee, is it your opinion that if a coal company, mining coal, was organized under this bill, that it could not sell that coal in Japan?

Mr. LEE. The company could not, for the coal would then be sold in Japan to the Japanese.

The CHAIRMAN. I am putting the question, though, in the way I think it appears to me. Japan wants coal. Do you mean that it could not sell the coal that it mines in Japan to citizens of Japan?

Mr. LEE. It could sell it in China to a Japanese agent.

The CHAIRMAN. Then you make a distinction between agreeing to deliver it in Japan and delivering it to some agent of the Japanese in China?

Mr. LEE. That is the distinction.

The CHAIRMAN. I do not think there is any distinction.

Mr. LEE. Mr. Chairman, I believe this should be kept in mind, if I may suggest it. The Judiciary Committee of the House, as I understood it, was desirous that the bill should not be used as a guise by engaging in a little business in China and then going abroad in another country and engaging in a great deal of business and obtaining the benefits of the act in respect to it. For that reason they tried to make a distinction between sale for delivery in China and delivery in Japan and sale there.

May I make one more statement with respect to Senator Brandegee's point. If you allow the company to purchase goods in the United States, it thereby will avoid a certain commission that it would have to pay, I suppose, if it purchased those goods from brokers or through an agency in China, and could have that profit for its own business instead of having to give it to some one else.

Senator BRANDEGEE. As it seems to me this section b—"such corporation may engage in any business or enterprise conducted wholly within China and carried on with persons in China"—would permit them to sell any foreigner who happened to be in China, and that foreigner could export it all over the world. I can not see that there is any other construction to be placed on that language. The business was within China, the business of trade or purchase and sale was made wholly within China; the people are right there.

Mr. LEE. That is entirely correct.

Senator BRANDEGEE. Very well. Then this corporation can export really its products all over the world.

Mr. LEE. Yes, sir; but only in the sense that you have just stated.

Senator WALSH of Montana. That is, provided it can find somebody in China to sell them to. I want to inquire of Mr. Lee about that. This law was apparently not intended to permit a corporation to engage in any export business there to the United States or to any other country?

Mr. LEE. That is correct. Of course, the Federal corporation may have a parent or subsidiary corporation formed under some State or foreign law or an agent which will take the goods off its hands in China and find the market for them in the United States or abroad.

Senator WALSH of Montana. Then I want to ask Mr. Powell this: Apparently, this corporation has no power whatever to export anything.

Mr. POWELL. As a corporation.

Senator WALSH of Montana. If it finds some foreigner, either individually, or a representative of some foreign firm to which it can sell any Chinese products in China, all well and good, but he can not go out into the United States or anywhere else and establish a market for Chinese goods and ship those Chinese goods. Now, of course, everybody recognizes that China can not pay for everything it buys in gold nor in securities. It has to pay in goods. Now, is it possible, as a commercial proposition, for a company to establish itself in China merely as a selling company, and not take at all in exchange Chinese goods which it can dispose of throughout the world?

Mr. POWELL. It would dispose of those goods there to the agent in Shanghai. This firm might, for example, buy Chinese raw silk. Raw silk is coming to America—I think we buy about forty or fifty million dollars worth a year.

Senator WALSH of Montana. Exactly, it can buy an enormous quantity of raw silk, but what will it do with that raw silk when it has it?

Mr. POWELL. It will have to sell it to somebody who can bring it into the United States.

Senator WALSH of Montana. But they would have to sell it to somebody in China?

Mr. POWELL. Yes, sir.

Senator WALSH of Montana. You can not sell it to anybody in the United States—that is, export it to the United States?

Mr. POWELL. No, sir; but you might have a representative of an American firm in China who would buy it from this firm, but he might not do that; he might go out and buy on his own.

Senator WALSH of Montana. That is compensation. If the New York firm has an agent in Canton or Shanghai, that agent will not buy from you; he will go and buy directly from the manufacturers from whom you get it.

Mr. POWELL. Yes, sir; except that this firm if it was in that business would have probably greater facilities for buying because buying is a very difficult process out there; materials have to be collected from thousands of small sources.

Senator WALSH of Montana. Do you think it is an inviting commercial or financial proposition—inviting to Chinese capital—to put their money into a corporation that has no power to buy Chinese goods and export them?

Mr. POWELL. No, sir; I can not see that it is.

Senator WALSH of Montana. I can speak from our own experience in the West—corporations engaged in buying wheat and grain. A farmer has got to buy coal, for instance, with the money that he gets from the same company that buys his grain and sells him his coal, and if you restrict that corporation to buying grain alone, you would practically take away half of the business.

Mr. ELDRIDGE. The exports from China to the United States are about 100 per cent greater than the imports of the United States into China, and have always been; in other words, the balance of trade from China to the United States is favorable to China.

Now, this bill will encourage the more equal balance of trade in that respect. It will encourage imports of American goods into China. The export of Chinese goods is a highly centralized proposition at the present time, in large buying agencies established in China. For instance, the export of raw silk is in the hands of a few large exporters of raw silk who are primarily agents for American-silk manufacturers. So the intent and purpose is that trade will probably be handled in the same way. It is more economical that it should be handled through these combinations of manufacturers who have their representatives in China. It is the same with respect to Chinese-oil seeds and Chinese hides. They are all sold there by strong combinations of importers. The import business is much more difficult to carry on in China than the export business.

Senator WALSH of Montana. I can appreciate very easily that we would like to do something to help our export business with China; that is important, the

import business to that country, but what do you think as a commercial proposition of setting up a company there that would have the right to sell things to China but provide no authority whatever to buy from them in such way that they could sell what they buy?

Mr. ELDRIDGE. To all practical purposes they would have to sell the commodities that they bought from the Chinese through the buying agencies of the foreign users in Shanghai. That is the way the business is conducted at the present time, and that is the way it will probably be continued, because, as I pointed out, it is more economical for manufacturers here to centralize their buying in China than to buy from four or five corporations which would be organized under this act. Shipments can be combined. When a sale of goods is shipped it is shipped in shipload lots.

Senator WALSH of Montana. Tell us what in your judgment would be the course of the transaction. Here is an American corporation. It is, we will say, importing goods from the United States for sale to the Chinese. Now, the Chinese have got some goods which they want to sell practically in exchange for them. Now, just what would be the business transaction?

Mr. ELDRIDGE. This corporation would import machinery. Of course, here enters the peculiar silver situation. A practical exchange of commodities does not take place in China because of the fact that silver enters into it. China is on a silver basis and we are on a gold basis; so all of those transactions have to be carried on through banks who, in effect, watch those sales. For instance, if a man is importing piece goods into China, he sells silver ahead in order to protect himself when those goods arrive. If he is selling copper or selling oil seeds he buys silver ahead in order that he may pay for those oil seeds when they are delivered in China. So, as a matter of fact, the bank is doing the actual exchange which you spoke of. The large banks out there are not commercial banking organizations in any sense. They are merely exchange institutions. They are organized for a purpose and the purpose is to facilitate this exchange between the export of Chinese products bought on a silver basis and the import of foreign products bought on a gold basis.

Senator WALSH of Montana. Now, the American corporation out there that organizes under one of the State laws is under none of those restrictions at all. It can buy anywhere it sees fit to buy, in the United States or anywhere else. It can export or import.

Mr. ELDRIDGE. Theoretically it is not, but practically it is.

Senator WALSH of Montana. Why theoretically?

Mr. ELDRIDGE. Theoretically, they could. A corporation could go in and buy Chinese products in exchange for American goods which they sell in China. The Standard Oil Co. has tried that. The Standard Oil Co. formerly thought they were selling so much petroleum in China that they could bring Chinese products from the interior to prevent that enormous transportation of silver from the interior points where they have sold petroleum to prevent bringing silver to Shanghai and putting it to their credit there in the foreign banks. When they tried to work that out practically they found that the peculiar trade situation in China is such that each commodity is handled by a guild. There is an oil-seed guild, a hides guild, and a guild for every commodity, and it is almost impossible to collect those commodities in the interior and engage in a bona fide import and export business. So the Standard Oil Co., an enormous company of that kind, was unable to break down this practical objection.

The CHAIRMAN. It seems to me that what you have in mind is really a corporation organized to sell the finished product.

Mr. ELDRIDGE. Yes, sir.

The CHAIRMAN. In China. But the bill is not limited to anything of that kind.

Mr. DYER. They wanted it broad enough to cover anything that they can get—develop the industries; for instance, the development of the electric light and power plants and operating mills and things of that kind. Of course, the machinery had to come from the United States.

The CHAIRMAN. But what I am trying to find out is whether it is in the interests of American trade or simply in the interests of American capital. If we can lawfully do it, I will be very glad to have American capital go to China and engage in business and be protected as fully as we can protect it. That is in the interests of just American business. But when we organize a corporation over there for the purpose of putting up electric light plants and building railroads and establishing banks and everything of that kind, then we have entered upon a very different field and a much more difficult field to properly cover it and put it into a law than a mere selling agent.

Mr. ELDRIDGE. But in China the sale of machinery is dependent upon the company or the nation which furnishes the capital. There is a very large amount of capital unmobilized in China. If they want to build an electric-light plant, the usual way is to go to the American manufacturer of hydroelectric machinery and say, "If you will give us 51 per cent, or if you will take over the corporation at 51 per cent and furnish us with the machinery, we will put up 49 per cent of the working capital." In that way American machinery is sold. So, while it seems to be the investment of American capital in China, practically it is the sale of American machinery in China.

There is just another point while we are on that, and that is that the British agencies for American goods are now handicapping the American trade in China. We have not enough American agencies in China. Although the numbers have increased from 48 to 315, still there are a number of lines of American manufacturers that can not get exclusive agencies for American firms to represent them in China. I am in daily receipt of requests for names of reputable American concerns, and I can only furnish a limited list because of the handicaps under which American firms are operating in China for the sale of American goods.

The CHAIRMAN. Take the particular case of the putting up of an electric light plant. Those who sell this machinery of course take their profit out of the sale, and that is the end of it. But this corporation engages in the operation of the electric light plant for a hundred years.

Mr. ELDRIDGE. They make an enormous profit on the accessories and the repair parts for every year after that.

The CHAIRMAN. They ought not to make any greater profit than is reasonable in the sale of the property to an independent corporation. The corporation is to manage and operate the plant, and they charge somebody in China for the service.

Mr. DYER. That is where Great Britain gets in. The people go in with them and form these companies, and she continues to sell these parts of this machinery at enormous profits because she has no competition.

The CHAIRMAN. That is pretty hard on the people of China?

Mr. DYER. Yes, sir; this legislation is intended to help the Chinese as much as the Americans, if not more. They are our best friends, and they trust us and like to do business with us, and we are handicapped because of the conditions I have mentioned.

The CHAIRMAN. They want to sell the stuff to them. The have put their money into it. Now their safety depends on the successful operation of these electric light plants.

Mr. DYER. Yes, sir.

The CHAIRMAN. And yet in the very same breath it is suggested that the American company, which sells the machinery at a high price, could sell the parts at a high price and make an immense profit out of that?

Mr. ELDRIDGE. I meant only comparatively; that the profit would be large as compared with the initial profit on the sale—the profit on the extension of additional machinery. Suppose they put up a single unit of an electric light plant requiring only a single unit, yet it may be that the company may be successful and wants to extend that. Naturally the company, if a majority American owned, the directors will all of them vote to buy that machinery in the United States.

The CHAIRMAN. And in all probability the capital stock will be held by friends that make those things in this company, and the American capitalist will be protected out of the profit he makes out of the sale, whereas the Chinese capitalist will have no protection at all.

Mr. ELDRIDGE. He will make his profit on the 49 per cent holdings.

Mr. DYER. Yes; they operate the plant entirely with Chinese. After it is once put up they take hold of these plants with managers and superintendents and laborers, and they work very successfully.

Mr. Chairman, I will now introduce Mr. Dodson.

STATEMENT OF MR. W. D. B. DODSON, MANAGER OF THE CHAMBER OF COMMERCE OF PORTLAND, OREG.

Mr. DODSON. Mr. Chairman, I have spent about five years in the Orient and for 15 years I have been in contact with our commercial interests that are dealing with the Orient. The problem that you are touching here is the vital

one. If there is a cotton mill going to be erected the gentry of the district get together and send their representatives down to Shanghai and other financial centers. They raise probably one-third of the capital that is needed for that enterprise among themselves. They then come to the foreign company—the Chinaman, whenever he can possibly do so, avoids putting his money into a concern that is subject to the control of his own Government, because of the squeeze system that prevails, which is inflicted on them by the officials. So he seeks, with all modern development wherever it is practicable, a foreign company. He comes to Shanghai with one-third of his capital, which is about the fair percentage for many different kinds of enterprises. He asks the foreign company to provide another one-third of the capital. With that two-thirds raised they organize that company. They sell then another one-third on the public market, you might say, the stock market.

Now, to carry that instance out for, say, a cotton mill, they go to a British company and the British company is named as managing agent of the company. The British company in the first place hires the engineer or architect that designs the plant. This condition is absolutely fixed, and unless there is an extraordinary margin of difference in the price, it is to be a British business. Therefore the company places these men in charge, and they fix specifications for spinning and weaving machinery. That is provided for by the British financing interests. All supplies, all extensions, and all materials in building, and everything else that can possibly be bought at even approximately equal price is put, through that intense national spirit, into British hands. I went to the Ewo Cotton Spinning Co., of Shanghai, about 13 years ago and tried to sell them some American belting. It was a British-controlled company. I offered a price that was 10 per cent under the best belting price of British make of the same grade that was being offered. They would not consider it. They would not consider American belting, which was in the hands of other nationals. There is an intense nationalism there in which the exact lines of competitive trade are not always observed.

Some of the people in Portland, Oreg., whom I represent, are now engaged in business in China. We made an offer, for instance, to a large oil-consuming company of this country to connect up as buying agents on the other side. We have a company there, or did have a company that was organized under the Hongkong ordinance. The order in council last year destroyed the power of Americans to manage that, although we had over two-thirds of the capital. The British order in council destroyed that. As soon as this large oil-importing company found out the condition that our company was in there—that we did not have an American company, but had this investment there jointly with the British, that it had such instability, they refused to deal with us, although this company of ours is going ahead in a great many different districts of China preparing to get into the field near the source of production.

Our situation is as follows: We have ship lines to China and are loading these ships with our commodities. We have no particular trouble with that, except we must have an intense selling organization on that side. Now, we are after return cargo. For instance, a British or Japanese company controls vegetable oil. A British company is going to hold its oil products and other exports for British ships. The Japanese company, under Japanese control, will hold its products that it is selling for Japanese ships and our company can not get them.

We have found it absolutely necessary, in the first place, to balance the cargo movement to and from the Orient. To do this properly we are seeking to get into China and go after the business there, to get in as far as it is possible, even further than the Japanese or British or other nationals. Immediately we undertake to do that we face the necessity of associated capital with the Chinese. The Chinese naturally and properly want to have a big hand in their business. They should have. They want to invest with companies that are going to develop their own industries, such as the cotton spinning, power plants, silk filatures, mills, and all those other industries that are being developed. They want a part of it and they are entitled to it. When their Government ultimately gets in stable form so that they can invest their money under their own laws, no doubt they will do away with the extraterritorial conditions that now prevail and will operate in China by themselves. It is their right. America will then join in giving them that right. But now it has to be a foreign company there, with foreign capital, with which is associated the Chinese, to give the Chinaman protection and prevent his Government officials from imposing upon him. As soon as we get companies there developed into strong stable business, that will ultimately enable us to get our share of the Chinese joint investment and business.

Apparently the theory that animated the Judiciary Committee was to limit the companies organized in China to buying solely in this country. The British-Chinese companies deal in all commodities in every direction. They are organized to operate in China and they deal in all merchandise in all directions, but the British do not suffer from that privilege, for the reason that they throw all possible business to their own nationals.

I will give you another instance in which I myself tried to negotiate the sale of goods for my people. The British had a railway concession from Shanghai to Nankin. We tried to have the ties bought of the Pacific Export Lumber Co., of my State. I was authorized to submit a bid, and submitted a bid of 67 cents per tie for creosoted Douglas fir ties, guaranteed for 10 years. The British engineer laughed at us. He said he was going to buy Australian jarawood ties, for which he paid $2.75, guaranteed for 20 years, because these ties were provided by a British colony and were offered by a British company.

Ours was the best tie for the money. It may be wrong to the Chinese, who grant the concession, but it is the way they are doing business. When they get a contract under a Government concession, or any of these jointly invested industrial enterprises there, the business then goes to that national if it can possibly be sent there. In my opinion, you should throw this business for American companies absolutely wide open to the trade of the world, except that you should not let the American companies with American or joint Chinese capital use it as a subterfuge to organize in the Orient and then go and compete with their own business at home. If you open it up, the intense nationalism that prevails there would load your ships both ways and get the cargoes on your ships, not the other fellow's, get the business into our banks, and get our share of the export and import trade generally. That intense nationalism is going to be a protection for American business whenever our companies are able to organize in China on an equal basis with the British and other nationalities.

The CHAIRMAN. Will you allow me to ask you a question there? I do not know anything about the Chinese law. Suppose one of these big companies wanted to build a street-car system or an electric-light plant in Pekin. It would have to get some authority from the Chinese Government, would it not?

Mr. DODSON. Yes, sir; that would be a city or provincial or imperial concession.

The CHAIRMAN. And, then, when it came to the charges that the street car company may make for its service, who would determine that?

Mr. DODSON. Do you mean regulate the charges for service, or purchasing of supplies?

The CHAIRMAN. I am referring to the charge for service.

Mr. DODSON. I do not think they have any regulations over there regarding that.

The CHAIRMAN. But suppose they wanted to do that; they may some time.

Mr. DODSON. If the Government grants the concession the regulatory powers would rest with the Government, or with the provincial power that granted the concession.

The CHAIRMAN. When you have a service of that kind, I suppose the corporation operating it wants to do it as economically as possible so that the stockholders of that corporation, entirely distinguished from those who sell goods to the corporation shall get the most profit?

Mr. DODSON. They do not do it that way. When they built the Shanghai tramway I was in Shanghai. An American street railway car builder asked for the opportunity to bid, but the financing had been done through British capital, through British banks, and we did not get a chance to bid on anything except possibly the copper for the trolley line.

The CHAIRMAN. Of course, I know that there is no such thought in your mind as exploiting the Chinese for the benefit of the rest of the world. There would be an immorality in that transaction.

Senator BRANDEGEE. In answer to Senator Cummins's question, you say they do not do it in that way?

Mr. DODSON. No, sir; except in a limited measure.

Senator BRANDEGEE. Maybe they have not in the past; but, as Senator Cummins says, when one of these corporations, to be formed under this act, requires a large amount of material to effectuate its purpose and the duty of its direc-

tors and its stockholders is to get that material where they can get it the cheapest, what is there to guarantee that they will violate their duty and will be overcome by this intense nationalism, that you think will guide them to buying from America, instead of some other country where they can buy more advantageously?

Mr. DODSON. The only assurance that we have is what they have done in the past. They have done it in the past. In the tie case, that I spoke of—which is not uncommon—in that case they gave a contract to Australia because it was a British Province.

Senator BRANDEGEE. I am not disputing the fact that the British have done it; but I am asking you what is to guarantee that the Americans will adopt the British method and try to throw the trade to their country instead of trying to throw the profits to their stockholders?

Mr. DODSON. As a matter of fact, in the last analysis, when you get down to the hard competitive trade of the future, there is not going to be the greatest margin of price difference in the commodities offered to China.

Senator BRANDEGEE. But there will always be a question of which market it is more desirable to purchase in, of course.

Mr. DODSON. There is always a variation in that.

Senator BRANDEGEE. Sellers all over the world to-day are trying to get trade for their connections and their firms by pretending or claiming that they can give the best service and furnish the best goods for the least money.

The CHAIRMAN. You have just explained a case where they were buying ties.

Mr. DODSON. Yes, sir.

The CHAIRMAN. Who has to pay that excessive price?

Mr. DODSON. The Chinese have to pay—the passengers and freight forwarders on the Chinese railway ultimately have to pay for it.

The CHAIRMAN. If this were confined to protecting our people over there in selling American products, it would appeal to me very strongly, and that is really what you want. You people who are interested in it are interested in it from an American standpoint?

Mr. DODSON. Entirely.

The CHAIRMAN. You want to be able to sell American goods over there?

Mr. DODSON. Entirely; yes, sir; if we can.

The CHAIRMAN. But I am afraid that some of the powers that you have asked for here go much further than that.

Mr. DODSON. It is not so intended. All we are seeking is the same power that our competitors have had. I believe it is stated on good authority that 80 per cent of what they call the good British business that is being handled in China to-day is on that class of business where they have become identified with Chinese capital in a private way, or have had the capital furnished in a public way. The British company absolutely takes this business and you can not bid against it in ordinary circumstances. I do not insist that every little item is thrown there, but all the major items that inter into that trade are thrown by some hook or crook in the same manner to their own nationals. I have butted into it several times. You may talk of quality of your goods, but they say you are wasting your time.

The CHAIRMAN. Suppose it is 51 per cent American capital and 49 per cent Chinese capital, the chances are that a larger part of the American capital would come from people who have the things to sell in China that are manufactured in the United States, and the interest of that 51 per cent would be not so much to make a profit for the corporation as to make a profit out of the sale of goods to the corporation. That is one of the difficulties I see in this proposition.

Senator BRANDEGEE. Section 14 of the bill provides:

"It is hereby declared to be the purposes of this act (1) to promote trade and commerce with China and create and develop markets in China for articles of commerce exported from the United States."

Well, according to the gentleman of the legislative drafting bureau, if you prevent this corporation from exporting from China to the United States—trade and commerce being reciprocal and implying mutual buying and selling, exporting, and importing from each other—I do not see how you are going to promote trade and commerce with China by simply exporting to them if you do not allow them to have a mutual exchange of commodities with this country.

Mr. DODSON. I admit that you have to exchange goods in some measure to establish the flow of trade. That is what we are desperately trying to do with our shipping and other business now. As Mr. Eldridge has pointed out, there

is a way of buying certain things from China under the bill. We want to encourage by this bill selling and buying, as I see it. I did not draft the bill, and I am not familiar with what was in the minds of the committee. I know that we want to get goods from China and to ship goods to China, so as reasonably well to balance our cargo movement. We have to buy if we sell. You have to load your steamers both ways to get good rates. The British company in China is both a buying and selling company, and if it can sell to one national it would be willing to buy from that national. It is a reciprocal proposition which will eventually necessarily be worked out, and America must adopt it ultimately or she is not going to get her share of the trade.

Senator BRANDEGEE. Of course, we have to allow for our protection on goods that come from China, as I understand it. It is nobody's intention to prevent goods coming to this country from China or Japan, but any degree of protection we want we must get by a protective tariff.

Mr. DODSON. The tariff will be the ultimate protection of the country.

Senator BRANDEGEE. Their citizens, of course, can not do it by reason of our exclusion act. We protect ourselves against their competing in labor with us in this country, but we have never sought to put an embargo against all trade with them. But this bill does. This bill prevents—if the gentleman who drew it has used his language right—he says it was the intention of the House Judiciary Committee to prevent this corporation from exporting anything from China into the United States.

The CHAIRMAN. Our people would be buying agencies there and they would buy from a corporation in China.

Mr. DODSON. We are buying vegetable oils now from a Japanese company, or a British company in China. Our big oil companies have been going to China lately and trying to buy direct from the Chinese. We are trying to offset that foreign control, looking at it from a steamship viewpoint—we are trying to get those purchases made in China by American companies so we can route it or control it and put it on our own ships.

Senator BRANDEGEE. If you could have your way, would you fix this bill so that this corporation might send gooods from China into the United States?

Mr. DODSON. Every business man would prefer that.

Senator BRANDEGEE. Why was it arranged differently?

Mr. DODSON. Mr. Seitz, who represented the business men of China, and who unfortunately is not here, appeared in the meetings of the Judiciary Committee, and from what he said I infer they reached these conclusions on what I believe was a compromise between what Mr. Seitz asked primarily and what the Judiciary Committee wanted. They were put in as proposed here to prevent any abuses. I understood that indirectly.

The CHAIRMAN. If we may pass from that point for a minute, I would like to ask some one who prepared this bill—assuming that under this bill the corporation to be organized in China, or organized to conduct business in China, can directly or indirectly buy or sell—buy goods from one other country and sell goods to the people of any other country—where is the authority under our Constitution to authorize the incorporation of that kind of concern? Have we any other authority than to regulate foreign commerce or commerce of foreign nations?

Mr. DODSON. I am not a lawyer, Senator, if you are directing your question to me. I do not think the limiting of buying and selling to one country could be done. Mr. Lee, who drafted it, says that there was something of the kind in the minds of the Judiciary Committee. I do not know whether it can be done or not, but think not.

Senator BRANDEGEE. The House report states, as I remember it—having glanced over it hurriedly—that the House committee considered the question of the constitutional power of Congress to pass this bill and had no doubt whatever of its power, and perhaps Mr. Dyer can make some statement about that, or some one other than a member of the House committee.

Mr. DYER. It is stated in the report here—and Mr. Lee looked it up, and I think he can answer that very well, because he examined the law very minutely.

Senator BRANDEGEE. I would like to hear about that, preceding it with this statement: This question has been mooted in the Judiciary Committee of the Senate several times, and while we all agree that this country has a right to fix the status of its citizens abroad, we are not aware that Congress has ever yet passed an act of incorporation that authorized a Federal corporation for the purpose exclusively of transacting business. We know about the bill for the Pacific Railroad, of course.

Mr. DYER. Do you not think the Edge law is the same as this?

Senator BRANDEGEE. That is not fresh in my mind.

Mr. DYER. By the Edge law Congress was authorized to create a corporation with power to aid foreign countries by loaning money to the credit of American merchandise in foreign countries.

Senator BRANDEGEE. My idea is this: Even when we built the Panama Canal it operated through a charter of the State of New York, where certain officers of the Government were officers and directors, but whenever they have incorporated anything it has been for something involving to some degree at least a governmental purpose to carry out some power that has been granted Congress under the Constitution. Now, it is not necessary to quote another bill of similar character to this that Congress may have passed in the hurry of the last year or two. It may be that the Edge bill is unconstitutional. I have not given it any consideration. But this one is informing. That was for the formation of a Government corporation to promote the purchases or something of that sort.

The CHAIRMAN. I do not think there is any parallel between the Edge law and this.

Senator BRANDEGEE. Neither do I. This provides for a company, a buying and selling corporation to make money. Now, what is the constitutional authority for that?

Senator WALSH of Montana. The primary purpose of the Edge bill was to permit corporations organized in this country to export goods from this country.

The CHAIRMAN. I assume that Congress has authority to organize a corporation to engage in commerce either between the States or with foreign nations; I think so, although there are some people who doubt that, because that may be said to be the regulation of commerce between the States or with foreign nations. But assuming that this bill means what Mr. Lee says it was intended to mean—I think he is right about that—it is not a regulation of commerce with foreign nations at all. It has no relation to foreign commerce necessarily.

Mr. DYER. Under our treaty with China we have the right to trade with that country.

Senator WALSH of Montana. Trade with that country. Senator Cummins made no question about trade with China, but the point he is making is trading not with China but trading in China between one Chinaman and another Chinaman.

Mr. POWELL. It comes under our extraterritorial status.

Senator BRANDEGEE. But how does it come under the Constitution of the United States?

Mr. POWELL. We have organized a United States Federal District Court out there for hearing disputes between Americans and between Americans and Chinese. Where an action is brought by a Chinese against an American it comes before the United States court.

The CHAIRMAN. You base the constitutionality of this bill upon the treaty that we have with China?

Mr. POWELL. Under our extraterritorial rights.

The CHAIRMAN. You do not claim that it is a regulation of commerce with a foreign nation, either directly or indirectly, do you?

Mr. DYER. I think it is, Mr. Chairman.

The CHAIRMAN. If you put it on that treaty, that is one thing; and if you put it on the Constitution, that is another proposition.

Mr. POWELL. This Government passed laws for the regulation of business in the territory of Alaska, for the conduct of mining and other enterprises in Alaska. We have a United States Court which was established in Shanghai in 1906. That court has ruled that legislation of this Congress for the Territory of Alaska applies to China under our extraterritorial jurisdiction, and that opinion still stands, and we are operating out there to a certain extent under the laws of Alaska.

Senator WALSH of Montana. That is only by express provision of the act.

Mr. POWELL. Under our extraterritorial status. In other words, some American companies in China occupy pretty much the same relation to our Government here at home as if they were operating in the Alaskan Territory.

Senator WALSH of Montana. No; that is not it. The legislation for Alaska depends on an entirely different section of the Constitution, which provides that Congress shall make all necessary rules and regulations concerning the territory and property of the United States. So they have the same plenary jurisdiction to legislate for Alaska that they have for the District of Columbia.

The CHAIRMAN. Could we pass a bill of this sort for the organization of a corporation to do business in England?

Mr. POWELL. No; because they would there come under the British law.

The CHAIRMAN. Then you would put it under the treaty with China?

Mr. POWELL. China is the only important place where we live under our own laws.

The CHAIRMAN. It does not depend on the Constitution at all, but only on the terms of our treaty with China.

Senator WALSH of Montana. As I understand, the treaty with China simply surrenders the jurisdiction by China over litigated controversies to which an American citizen is a party, and the treaty stipulates that the Government of the United States may set up in China for the purpose of trying litigation to which a citizen is a party.

Now, when we have that kind of treaty with China—China simply surrendering that right—how does that give to the Congress of the United States the power to create a corporation to do business in China?

The CHAIRMAN. Let us put it differently. Could we pass a law of this sort organizing a corporation to do business in the State of New York?

Mr. DYER. Mr. Lee will answer your question, Mr. Chairman.

Senator BRANDEGEE. If he has looked the matter up.

Mr. LEE. I think Senator Walsh is entirely correct. I have to disagree with Mr. Powell when he says we have power to legislate with respect to China the same as we have with respect to Alaska. I think what Mr. Powell has in mind is this: Under the treaty, as the Senator says, the United States court in China may handle certain, not all, but certain litigated cases involving United States citizens in China. When we established the court, under our power to execute that treaty, we said that the law that that court should apply to those litigated cases, should, first, be "the laws of the United States," and that has been interpreted to mean particular statutes of the Congress of the United States, either general in operation, or limited in locality to Alaska, the District of Columbia, Hawaii, or the Philippines. So, in a particular case, if the court has not found that there is any law of the United States of general application covering the specific controversies in question, it will go to the District of Columbia Code, for instance, and see if there is an analagous principle there. Thus, as I understand it, the court has under consideration the incorporation of companies by it in accordance with the District of Columbia incorporation laws. Second, where the laws of the United States "are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies, the common law, including equity and admiralty" is to be applied. It is a very anamalous situation.

Senator BRANDEGEE. But what relevancy has it?

Mr. LEE. It shows that the power to provide law for our courts in China in the execution of our treaties is unrelated to the powers to legislate in respect to territory over which the United States is the exclusive sovereign, as the District of Columbia and Alaska.

Senator BRANDEGEE. If the treaty can not repeal the Constitution, then we can not give Congress any power that it did not derive from the Constitution. Of course we can pass laws to determine the rights of our citizens when they are at sea on ships and when they are in foreign countries, but I do not see that that has the slightest relevancy.

Senator WALSH of Montana. Let me call your attention to the migratory bird decision. In that case it was held that the act of Congress prohibiting the killing of migratory birds within the United States was without constitutional authority. Thereupon the United States made a treaty with Great Britain reciprocal in America—the United States agreeing to protect migratory birds in this country and Canada agreeing to protect migratory birds in Canada. Thereupon the United States passed an act prohibiting the killing of migratory birds in the United States and it was sustained as constitutional by the Supreme Court.

Senator BRANDEGEE. Do you think it was constitutional?

Senator WALSH of Montana. I have never looked into it. I am simply speaking of what the Supreme Court decided. So that there seems to be no doubt in view of that decision that powers may be exercised by the Congress of the United States under and pursuant to treaty which it would have no power to enact in the absence of the treaty. Now, if there was something in the treaty

with China which obligated the United States or authorized the United States to enact certain legislation, it might possibly be defensible; but the mere fact that we have a treaty providing that certain litigation could come before a United States court in China would, it seems to me, afford no foundation whatever for legislation by Congress creating a corporation to exercise powers there.

Mr. POWELL. But at the same time Congress gave us that; they conceded that to us in the concession to Shanghai.

Senator WALSH of Montana. Concession of what?

Mr. POWELL. Concession of land. Our interest in the international settlement in Shanghai was based upon the treaty with China.

Senator WALSH of Montana. But when Congress gave us the concession of land in Shanghai——

Mr. POWELL. No; it was by treaty.

Senator WALSH of Montana. How would that afford a foundation for the creation of a corporation to do business anywhere in China? The point I am getting at is what provision there is in the treaty, if there is any at all, that would afford justification for this legislation, assuming that otherwise it is not authorized by the Constitution.

Senator BRANDEGEE. To simply say that the situation in China is anomalous, or our authority to pass this general incorporation act for incorporation in China is based on extraterritoriality—that means nothing, to my mind. I want it based on the Constitution of the United States—if there is any constitutional authority. It seems to be greatly in doubt whether we could incorporate a similar company to one of these in this country, simply to do business in this country, if it was not a regulation of commerce—simply to incorporate a trading company to encourage business. I do not know what the authority for it is in the Constitution, unless it is the regulation of commerce. Is that what you base it on—the commerce clause?

Mr. LEE. Let me go one step further and finish up that matter of the treaty. It is true, as the Senator suggests, that Congress may enact a law to enforce treaties where it could not enact the law otherwise, but it seems to be a very far step to say that the enforcement of our treaty relations with China necessitates the incorporation of Federal companies. The Judiciary Committee did not assume to base its position on that, and I would not attempt to do so myself.

Now, the only power that I believe is available is the commerce power, and that is the power to regulate commerce among the several States and with foreign nations. As the chairman [Senator Cummins] very pointedly puts it—and as Mr. Volstead just as aptly expresses it—we have the power under that clause to incorporate companies for trade between the United States and China, if not for trade entirely within China. I am assuming now that incidental to our power to regulate commerce we may create corporations and that such power is not limited to incorporation for governmental functions only, which have been disputed points. I think that probably now you would find the majority of constitutional lawyers—and certainly most of the recent legal literature—supporting the proposition that we can incorporate for private enterprises as well as for governmental enterprises. Compare, for instance, these articles: Federal Incorporation, by M. W. Watkins (17 Mich. L. Rev., pp. 64–80, 145–164, and 238–260); a National Incorporation Law, by H. L. Wilgus (2 Mich. L. Rev., 358 and 501); The Power of Congress to Enact Corporation Laws, by Victor Morawetz (26 Harv. L. Rev., 667–83); and Federal Incorporation, by Roland Heisler.

Senator BRANDEGEE. Do you mean private enterprise, irrespective of whether it regulates commerce or not?

Mr. LEE. Oh, no; private enterprises that fall within the scope of interstate commerce, or commerce with foreign countries.

Now, as Senator Cummins and Representative Volstead pointed out, the constitutional language gives us the power presumably to incorporate for trade between the United States and China. It does expressly say in words "commerce with foreign nations," but does not expressly say anything about trade entirely within foreign nations, as China. Such trade does not involve trade between the two countries. It is in some ways analogous to an attempt to establish a Federal corporation for trade within the State of Illinois in intrastate commerce only, as a hotel corporation to operate in the city of Chicago.

Now, apparently those who wrote the report of the Judiciary Committee had this in mind, if the Federal Government has not the power to regulate commerce within China, the States certainly would not have it, and there would be a void in what we very loosely call the sovereign powers of the United States.

Senator BRANDEGEE. Please state that again.

Mr. LEE. The writer of the report puts it as follows:

"The framers of the Constitution no doubt intended that all power and intercourse with foreign nations and their citizens should rest with the Federal Government. The power to aid our citizens under circumstances such as these would seem to be an attribute of sovereignty possessed by every independent nation. This power clearly does not belong to the States."

Senator BRANDEGEE. What power is he talking about to aid our own citizens?

Mr. LEE. He means the power to establish corporations for internal trade in China.

Senator WALSH of Montana. Why is not that within the power of the State? That is what they have been doing. The Standard Oil Co. has been out there with a State incorporation doing all this business, and all these things that you now seek to do by this bill. What is the reason that an incorporation can not be organized under the laws of the State of West Virginia to do business in China?

Mr. LEE. The power of the State to create or exclude a corporation is an exercise of its police powers, including its power to regulate intrastate commerce. The right of the State corporation to engage in interstate or foreign commerce is subject to the power of the United States to regulate that commerce, and many think that this regulation would include the power to exclude entirely from the channels of that commerce. In other words, the right of the State corporation to engage in interstate or foreign commerce, while not precisely a privilege granted by the Federal Government, is, nevertheless, not a right that can be granted solely by the State government, but is subject to Federal regulation. In no case has the State the power to regulate interstate or foreign commerce in the absence of at least tacit consent by the Federal Government, and the State corporations do not engage therein by virtue of any power reserved to the States. The State may create a corporation and permit it to engage in interstate or foreign as well as intrastate commerce, if the Federal Government does not prohibit it from doing so; but the State has not the power of itself to give authority to any corporation created by it to engage in interstate commerce or foreign commerce whether between the United States and China or entirely within China.

The CHAIRMAN. Let me suggest this: They can do that; the States can exercise that power. They do exercise it with regard to nearly all our railroads. They organize under State law and do interstate business.

Senator BRANDEGEE. It seems to me it goes without saying that if the State can organize a corporation to trade all over the world, it can organize it to trade in any part of the world.

The CHAIRMAN. They do it, but here is the point—going back to the Supreme Court. It has decided, for instance, that Congress may authorize the incorporation of a railroad to do business between the States, or among the States in interstate commerce, and as incident to its authority to transport goods from one State to another it can also take the authority to transport goods within the State to points wholly within the State, and it can do that under authority granted by Congress. But the object of that legislation was to create a corporation to do business between the States or among the States, and the other falls as an incident to it.

I have no doubt about our right to organize a corporation to do business as between itself and the citizens of China. As I understand it, they now sell goods in China and buy goods in China. But that is not the character of the corporation you propose here. You propose, in other words, an American industrial enterprise for large profits, and let it appear that the purpose is to do business wholly within China.

M. LEE. Let me answer that. The proposition that I have just finished stating is not my proposition. It is a proposition that was advanced in the committee report by those who wrote thta port of it. My idea is that the only power the Government has to create corporations for inernal trade in China is not a power to fill up what would otherwise be a void in sovereignty, but is the power to regulate foreign commerce. If it can not be brought in under that, I do not know where it can be brought in.

Now you suggest, Mr. Chairman, that it could be made incidental to the power to engage in trade between the two countries, but the bill eliminates for the most part the power of the corporation to engage directly in trade between these two countries. This point was discussed in the committee and, as I understood it, was subscribed to by many of the members, that the internal trade in China resulted in large measure in trade between the two countries, the United States

and China: that the corporation engaging in that trade would stimulate the trade between the two countries; and that, even though you interpret the language "commerce with foreign countries" to mean only commerce between the two countries, still it would be a regulation of trade between the two countries to incorporate a company engaged in internal trade in China which resulted in the stimulation of trade between the two countries.

Senator WALSH of Montana. That would mean if you expressly forbid any importations from the United States by the corporation at all, and restricted it exclusively to trade within China—that is to say, if the bill were limited to subdivision (b)—then it would still be within the powers of Congress.

Mr. LEE. Yes. Now one step further. Of course, I am not so much attempting to give you my personal opinion as to present to you the various views that have been advanced; but personally I would offer this suggestion: I do not know why we should attempt to impose a narrow limitation upon the words "commerce with foreign nations" by limiting them to trade between the two countries. So far as the decisions are concerned, that is the only type of case that has arisen. When the courts have interpreted that clause the cases have all been involving the exclusion from the United States of immigrants or of teas or other articles of commerce, and that is the only type of trade that has been before the Supreme Court. You have a case here that is entirely new.

Senator BRANDEGEE. How can it possibly be contended that the operations of a corporation in China can be commerce between this country and foreign nations?

Senator WALSH of Montana. He says it is commerce with if it is not between.

Senator BRANDEGEE. How can the transactions of some Americans and Chinese forming a company for conducting business exclusively within the Chinese Empire be construed to be commerce with China by this country?

Mr. LEE. Well, Mr. Beaman calls my attention to what I have tried to bring out as expressed in the purpose of the bill. The purpose of the bill is "to promote——"

Senator BRANDEGEE. If you will pardon me, I do not think any importance should be attached to what the bill suggests as its purpose in determining what our constitutional power is.

Mr. LEE. It is not binding on the courts, but it shows the theory of the committee.

Senator BRANDEGEE. I have no doubt the theory of the committee was to bring it within the Constitution if they could. I have a little impression in my mind that when we passed the Appalachian White Mountain Forest Reserve bill I claimed it was in the interest of navigation, which was clearly authorized under the commerce clause, but I made up my mind we could not go any further on that line.

Mr. LEE. The first provision is that the trade within China promotes trade between the two countries, and that it is therefore a regulation of trade between the two countries to provide a corporation to engage in trade within China, and, as Senator Walsh points out, subdivision (b) would fall within that theory even if you had no power to engage in any trade with or within the United States.

The CHAIRMAN. All of that comes to this and is based on this idea alone, that if you have a corporation with the majority of stock held by American citizens, that such a corporation in its natural operation would promote trade with China?

Mr. LEE. Yes, sir.

The CHAIRMAN. That is the sole basis for our authority?

Senator BRANDEGEE. That it is a regulation of foreign commerce.

The CHAIRMAN. We have to assume that because they are American citizens they will want to deal in American goods, and without any requirements at all they will enlarge or promote or encourage trade with China.

Senator BRANDEGEE. Suppose there was no provision at all as to who the directors or stockholders of the corporation would be?

The CHAIRMAN. Then I assume that the basis wuld drop out and there would not be any authority for it.

Senator WALSH of Montana. You must follow that to its logical conclusion.

Mr. POWELL. As it is now, any person, American or otherwise, can organize a company under certain State laws, go to China, and do business out there under the American flag, although there is not one dollar of American money in the thing.

Senator WALSH of Montana. This bill would not prevent that.

The CHAIRMAN. We could prevent that by law, probably.

Senator WALSH of Montana. Mr. Lee, following the line of argument that we have been pursuing, you would be obliged to agree, then, that a bill might be passed by Congress, providing for the creation of a corporation, the majority of the directors of which were American citizens to do business anywhere outside of the United States?

Mr. LEE. In England, for instance.

Senator WALSH of Montana. Exactly. Now, let us follow that. Doing interstate business stands on exactly the same footing as doing foreign business, and accordingly Congress could organize a corporation to do business anywhere in any State.

Mr. LEE. I think there, Senator, perhaps, you have not made this distinction——

Senator WALSH of Montana. Going back now to the McCulloch against the State of Maryland, it was perfectly foolish to make the argument that was made there, because naturally one of your arguments would be that Congress has a right to organize a corporation to do business anywhere, because, no matter what kind of business it does anywhere, it will tend to promote commerce between the several States.

Mr. LEE. I do not think that follows, in so far as you have in mind intrastate business, because there Congress has the power to regulate interstate business, but the power to regulate intrastate business is reserved to the States by the Constitution.

Senator WALSH of Montana. It is reserved to the States only by reason of the fact that interstate commerce is given to Congress—that is all—just the same as the power to regulate foreign commerce is given to Congress, and if a corporation can be created under that provision of the Constitution to engage in foreign commerce it by the same process of reasoning can be justified to engage in interstate commerce, and if the creation of a corporation, the majority of whose citizens can be authorized to engage in foreign commerce, why can not a corporation be created, a majority of whose citizens are Americans, to do business within any State?

Mr. LEE. I do not follow that at all, Senator. It seems to me that our powers to regulate foreign commerce are considerably broader in some respects than our powers to regulate interstate commerce, and I think that the fact that you have intrastate commerce reserved to the States, that then Congress can only authorize the Federal Government to enter upon intrastate commerce, either directly or through the agency of the corporation, in so far as is claimed in the Shreveport Rate Case and those following it, is incidentally necessary to the regulation of interstate commerce.

Now, the reason why you might not want to form a corporation for engaging in trade in Great Britain is that Great Britain exercises certain rights that it has that China does not exercise, namely, we can not enter into Great Britain and do business in a corporate form without reincorporation under the British laws, just like a corporation of the State of Maryland can not do business in the State of Virginia without receiving either consent to do business or a certificate to do business or else becoming reincorporated under the Virginia laws.

Now, let me explain one final view. As I understand it, the Office of the Solicitor of the Department of Commerce has this view—I am presenting all these views in order that they may all be before you. They feel, as I understood Mr. Magie—and I want to say that this is only what I understood him to say—I am trying to present it just as correctly as I remember it—they feel that it is a regulation of foreign commerce if we regulate commerce between the citizens of the United States and citizens of a foreign country, no matter whether the citizens of the United States are within the geographical area of the United States or are within the foreign nation. That is the position the department takes; and, of course, that is one reason—not the only reason—but one reason why this corporation is declared a citizen of the United States. Another is so that the protection of the flag will follow.

Senator BRANDEGEE. Do you mean to say that the Department of Commerce, or their solicitor, claims that if a man sets up a jewelry shop in Rome, Italy, and deals with Italians, that that is a kind of foreign commerce the Constitution of the United States has given us power to regulate?

Mr. LEE. That is what I mean to say I understand the department to say, that that constitutes "commerce with foreign nations," and so far as the foreign nation permits is subject to regulation by the Federal Government.

The CHAIRMAN. Is there anything further in this matter that you gentlemen desire to put before the committee?

Mr. ELDRIDGE. Mr. Chairman, I have just one point. There is another way in which these persons in China could deal with American firms. I understand it is the purpose of a good many large American corporations if this act is passed to transfer their China business—for instance, the British-American Tobacco Co.—to transfer their China business to a subsidiary under this act, keeping their principal business with other parts of the world under their American State incorporation. So that it would really operate that the parent corporation will deal with the China corporation just as I have already pointed out, the China corporation could deal with the agent of an American company for the purchase of American tobacco. In that the Standard Oil Co. would probably do the same thing, and a number of other large corporations would create subsidiaries under this China trade act, but would have very close connections with the American corporation or the American parent corporation under the State law, and in that way facilitate trade.

Senator WALSH of Montana. That leads me to inquire why do not exactly the same conditions, except possibly in the matter of degree, pertain with respect to trade in Japan.

Mr. ELDRIDGE. Because in Japan a foreign corporation operates under the Japanese law. Japan has not delegated any authority to the United States to form corporations.

Senator WALSH of Montana. But that is merely a judicial matter. If a corporation wants to do business in Japan, it organizes under State law and does business in Japan.

Mr. POWELL. Subject to the Japanese law. We operate in China under our extra territorial rights. This bill would only be good until that time when our extra territorial right was given up, and then we come under the Chinese jurisdiction.

Senator WALSH of Montana. But what difference does it make whether you operate under the United States law or under the Japanese law so far as determining the question as to whether the corporation should be a State corporation or a Federal corporation?

Mr. ELDRIDGE. It makes no essential difference as far as the Japanese law is concerned.

Senator WALSH of Montana. Why should it make any difference as far as either law is concerned? Here is the situation: A corporation is operated in Japan. It is a corporation organized under the laws of the State of New York. We have no extra territorial rights there at all. If they get into a controversy of any kind with the Japanese, they must determine that controversy—the Japanese courts—and the corporation must submit itself to that. It must, as you say, operate under Japanese law. In China it does not have to subject itself to the Chinese courts; it is answerable only in the United States courts. Accordingly, it would seem to me as though there would be even more occasion for organization under Federal charter in Japan, but it would not have the protection of the United States courts.

Mr. ELDRIDGE. There is this difference in China, the American court interprets the corporation law of the State in which that corporation is organized. Now, in the case of Nevada, for instance, it would be possible for a corporation to organize with $200,000 of paid-up capital and $100,000 paid-up stock.

In Japan a corporation could be organized in three ways—at least Americans may do business in three ways: They may organize as a Japanese stock company and become to all intents and purposes a Japanese subject; they may register as an American company. If they register as an American company, they must fulfill certain primary obligations. Those obligations Japan makes sure are such as to protect her interests. Now, in China there is no such regulation. As to a corporation organized under a State code in China, an American court would be compelled to administer the law of the State of Nevada, for instance.

Senator WALSH of Montana. Exactly; in China the corporation would not only be subject to greater liberties than it would be in Japan, but it would have the extraordinary privilege of not being subject to the local courts at all but subject to the United States courts.

Mr. ELDRIDGE. Yes.

Senator WALSH of Montana. Now, if we needed any additional powers it would seem to me the additional powers should be granted them in Japan and not in China.

Mr. ELDRIDGE. But that has been abused in China with the extraterritorial power——

Senator BRANDEGEE. Pardon me, but what the Senator wants to know is if the Federal incorporation as proposed in this bill is necessary to help our corporation in China, why is it not equally necessary to have one in Japan to help our corporation promote our trade with Japan?

Mr. ELDRIDGE. Because the Japanese themselves, in the last analysis, dictate what sort of corporations shall come in.

Senator BRANDEGEE. Why is it not all the more necessary for us to have a Federal corporation to promote trade with Japan? I do not hear anybody saying that they have to have their income tax rebated in order to trade in Japan, or that they have to have a Federal charter, but they do say as to China. Why is it?

Mr. DYER. Because no other country does that in Japan.

Senator BRANDEGEE. I have no doubt there is some difference, but I want it explained.

Mr. DYER. It is only in China that Great Britain or any other country exempts nationals. They do not do that in Japan.

Senator WALSH of Montana. As far as tax exemptions are concerned, you can give exemption to a State corporation just the same as to a Federal corporation. You do not need Federal corporation to give exemption.

Mr. DODSON. In the first place, there is no uniformity in China. In Japan they impose regulations for state incorporations. There are certain fundamental requirements that will be taken care of by this Japanese law. In China you have 48 different varieties of organizations.

Senator WALSH of Montana. But you have the same in Japan?

Mr. DODSON. But here is the difference, there is no regulatory power. Let me give you one instance that was cited by Mr. Seitz. There was one company organized under the law of Texas and the same company organized under the law of another State. Under the law of Texas the company had $5,000 capital stock. Under the law of the other State it has about $200,000 capital stock. That operation had this effect: That the big, well-organized company was doing business when profits were made, but when trouble came, with losses, the Texas company, with its little limited stock and no liability, was the company. It brought confusion to the Chinaman's mind. He said there was no stability, that he could not know anything about the American corporations because there was no uniformity. Every other national comes to China with an absolutely uniform act, and he knows what it is, but with us we have every variety under the sun, and with no power to protect the investment.

Senator WALSH of Montana. I suspect the rules of law in Japan are practically the same as ours. We allow a British corporation to come into this country and trade here. Every State has a statute requiring in the first place the filing of articles of incorporation and the appointment of an agent upon whom service of process can be made. What more is there in Japan?

Mr. DODSON. The second point is this: We want to get the Chinamen to invest with us in business there. There is that regulation of government in Japan that we are contending for in China. If you are going to invest in a company in Japan such a company as the General Electric Co., they make it necessary for the Japanese to participate, and everything is done under the Japanese law. If you go into China you have this confusion to which I have referred and no control.

Senator WALSH of Montana. But here is a company that is doing business in Japan and it wants to come over into China and do business there. Why should not the same people do business in Japan under a charter granted by the State of California, or organized under the State of California, while when it goes into China to do business it has to have a Federal charter?

Mr. DODSON. The proposed Federal bill is so that they will know there is one uniform chartering provision and if they will follow that the Chinaman is guaranteed that there is a fixed regulating control and power which will protect him in his investment.

Senator WALSH of Montana. The company has standing enough to acquire the confidence of the Chinese people but it has not standing enough to acquire the confidence of the Japanese people.

Mr. POWELL. That is because any company doing business in Japan does not do business to any great extent under its State charter, but under the Japanese law.

Senator WALSH of Montana. When you say it does business under the Japanese law, what are the requirements there that must be observed; what more

than to file its charter of incorporation and appoint an agent upon whom service of process can be made—what other way is the corporation subject to the Japanese law different from what it is subjected to under the Chinese law?

Mr. DODSON. There was a sugar company organized in Idaho and they wanted Japanese stock subscriptions. When the company sent agents to Japan to get subscriptions, the Japanese authorities investigated that company and immediately took steps to get full and complete information to the prospective subscribers in Japan of that American sugar company. Now, in China you have nothing of that kind. They just go loose and wild. The Chinaman is thrown on his own resources. He has no governmental protection and he soon reaches a conclusion that American companies are almost impossible unless they are such as the Standard Oil Co. or the British-American Tobacco Co. It leads him to have serious doubt of the stability of practically every new American company. Thus we fail to get joint Chinese investment.

Mr. DYER. Japan only has laws governing corporations; China has none.

Senator WALSH of Montana. To what laws do you refer?

Mr. DYER. The same as we have here, for investigation and examination, and report, etc. China has nothing of that kind.

Senator WALSH of Montana. But we do not have any such laws. I do not know of any State in the Union that makes any investigation of the character or standing of a corporation that is being organized for the purpose of doing business. I do not know of any State in the Union that requires anything more than the filing of its articles of incorporation and the appointment of an agent.

Mr. DODSON. If they sell stock in our State they are subject to the supervision of the proper officials.

Senator WALSH of Montana. You mean the blue sky law?

Mr. DODSON. What we want, Mr. Chairman, is to get the investment of the Chinese with us; but, as a matter of fact, there now is no protection for him and no safeguard for him. The wildcat promoter can go there and start a company in which he will skin everybody who goes in with him, because they have no supervising power.

Senator WALSH of Montana. Really, what you want is a kind of blue sky law applicable to corporations that undertake to do business in China.

Mr. DODSON. We want uniform laws. In the first place, the bankers will tell you that the greatest difficulty they have in handling corporation securities in America in the various States is because of the existing difficulty of keeping track of all corporation laws. Here we have the Chinese people, who are certainly less informed than the bankers of America, and even the latter want uniformity. We want some standard so that if they see that it is an American corporation they will know that it is something that has character, and in the next place we want protection against these frauds which blacken America's name over there and prevent any associated investment or incorporation with us in anything that is American.

The CHAIRMAN. The point I have in mind and on which I desire some explanation is section 16, which provides:

"The secretary may suspend the charter of a corporation whenever, with or without examination, as provided in section 15, he becomes satisfied that the business and affairs of the corporation are conducted or have been conducted within the year last preceding in a manner (1) contrary to the provisions of this act or any other law or treaty of the United States, or of the articles of incorporation or by-laws of the corporation, or (2) detrimental to the business interests and good will of the United States."

Following that suspension the case may go to the court, but the court finally will be called upon to pass on the question as to whether the business of the corporation has been conducted in a manner detrimental to the business interests and good will of the United States.

That seems to me to be the most extraordinary suggestion I have ever seen in legislation. Do you think that any sensible business man—Chinaman or American—would put his money in a corporation with any such power as that vested in the Secretary of Commerce, or in the courts?

Mr. DODSON. That provision was copied—I do not say word for word, but in substance—from the Hongkong ordinances. It has this purpose behind it: In that distant country the British had found it extremely expedient to have vested in some reputable strong authority the power to stop abuses of those things which hurt the British name and British business.

The CHAIRMAN. That is all right; there is no objection whatever to the provision that says if "the affairs of the corporation are conducted or have been conducted within the year last preceding in a manner contrary to the provisions of this act or any other law or treaty of the United States or the articles of incorporation or by laws of incorporation"—but when you say that the corporation is to be wound up, must quit if the Secretary of Commerce feels that it is detrimental to the business interests of the United States or good will, I suppose it means good will between the United States and China—and that the court may afterwards be called upon to pass upon that question, it would seem to me to furnish no security for capital invested in a corporation of that kind. You might just as well turn it over to the court to say, "If you think this man ought to be allowed to do business, let him do business, and if you think he ought not to be allowed to do business, shut him off."

Mr. DYER. That power, Mr. Chairman, do you not think, ought to be put with somebody?

The CHAIRMAN. The law that is to be administered either by an executive officer or the court ought to be definite. It ought not to be submitted to the mere judgment of the individual as to whether a particular business is detrimental to the business of a country or the good will of the country. I think no one will recognize that more quickly than Mr. Dyer.

Mr. DYER. I will be very glad, Mr. Chairman, to have you rewrite it and make such suggestions as you think would cover the situation. All we are interested in, as far as the House is concerned is in not allowing any wildcat carrying on of business to the detriment of the good name of the United States or the interest of the Chinese people, and that is the provision which we thought would cover it. But, as I say, anything that would safeguard that would be perfectly satisfactory.

Senator WALSH of Montana. I should think that a court would decline to take cognizance of that on the ground that that is not a judicial question at all.

Mr. DYER. The court over there takes cognizance of it.

The CHAIRMAN. I am wondering how it happened to get in the bill.

Senator BRANDEGEE. The previous section to that, on page 10, line 6, provides:

"The Secretary of Commerce is authorized to prescribe and promulgate such regulations and issue such orders, not in conflict with the provisions of this act, as he deems necessary to carry into effect the provisions and purposes of the act, including the manner and form in which the corporation shall keep its records and accounts, and the amounts of any fees authorized to be prescribed by the secretary."

Now, under that, the Secretary of Commerce might think that he was given practically authority to direct the activities of the business of some of these corporations, and issue any orders that he thinks are necessary to carry the provisions and purposes of this act into effect. If you mean that power, I think I can see ways by which I could practically be the director of the business and policies of these companies especially if I had authority to suspend their charters if they did not obey me.

Senator WALSH of Montana. All right, Mr. Hoover will exercise that power.

Senator BRANDEGEE. I have no doubt he will very extensively exercise the power and benevolently, perhaps.

The CHAIRMAN. He may not always be the Secretary of Commerce, however.

Senator BRANDEGEE. Why was it necessary to extend the national prohibition act over into China?

Mr. DODSON. Mr. Volstead is chairman of the Judiciary Committee of the House.

Senator BRANDEGEE. I did not intend an impolite inquiry.

Mr. POWELL. There is a possibility also that drafters of the bill had in mind the protests of American missionaries who feared that the American brewers were going to move their plants to China.

The CHAIRMAN. There is another point that I do not get in my mind accurately. I suppose it is capable of very quick explanation, but in section 5, the latter part of it, it is provided that the stock can be paid up in property as well as cash. It says:

"No charter shall be issued unless the secretary finds that the properties described and its value stated in the same manner as provided in section 9, and that such value is the fair market value"—now, that is all right—"and is at least equal to the difference between 25 per centum of the capital stock and the amount of cash, if any, so paid in."

What does that mean?

Senator BRANDEGEE. Is there not a proviso somewhere that they shall not do business until 25 per cent of the stock is paid for?

Mr. DYER. Yes; that is in there.

The CHAIRMAN. It says:

"An amount equal to 25 per cent of the amount of capital stock has been in good faith subscribed and actually paid in cash, personal property, tangible or intangible, or real property, and is in the custody of the individuals specified in subdivision f."

Now, you must also find that if it is paid in property, that the property is at least equal to the difference between 25 per cent of capital stock and the amount of cash, if any, so paid in. Does that mean an aggregate of all the subscriptions that are to be paid in property, or do you mean that will apply to an individual who subscribes—must he pay a certain amount in cash and the rest in property, or must at least 25 per cent of all the capital be paid in cash and 75 per cent in property.

Mr. DODSON. It is intended to be both.

Senator WALSH of Montana. It seems to me clear, Senator, that 25 per cent of the capital stock must be paid either in cash or in property. It says:

"If any part of such payment is made in property other than cash, no charter shall be issued unless the secretary finds that the property is described and its value stated in the same manner as provided in section 9, and that such value is the market value, and is at least equal to the difference between 25 per cent of the capital stock and the amount of cash, if any, so paid in."

If 10 per cent is paid in cash and the rest of the 25 per cent is paid in property, the secretary must find that that property is of value at least equal to 15 per cent.

The CHAIRMAN. But that language is wholly unnecessary to work out that plan, because it says:

"The fact that an amount equal to 25 per cent of the amount of capital stock has been in good faith subscribed and actually paid in cash, personal property, tangible or intangible, or real property."

Now, if that is the purpose of the language in the latter part of the paragraph, it is entirely unnecessary because the first part of the paragraph would absolutely require it.

Senator WALSH of Montana. Except that it tends to emphasize it by saying that no charter shall be issued until the secretary shall have so determined. If the secretary had not so determined it would be still open to inquiry later on; that is to say, the purpose of that is to require the secretary to make a finding before the corporation can do business, or before he will issue a charter he must make a finding that the property paid in equals the difference between the cash paid in—equal in value to the difference in cash paid in—and 25 per cent of the entire capital stock. I think it is appropriate.

Senator BRANDEGEE. I think that is fair. Now, I want to call attention to the fact, or to make a brief statement about this for the consideration of Mr. Dyer and the gentlemen present in behalf of the bill.

Take page 7, where it provides in section 9 that no stocks shall be issued unless "the secretary finds, and has certified to the corporations, that such value is not more than the fair market value of the property and is at least equal to the par value of the stock issued therefor."

Now, the Secretary of Commerce, with the other powers that he has in this bill, is required to fix the valuation upon all the property that is put in against the stock issue. The query in my mind was whether or not the condition of the Chinese mind, being such as has been described here, wanting a Federal act of incorporation which they could rely upon and trust—when they find that our Secretary of Commerce, a direct Government official, has guaranteed or found that the property of this corporation is worth what it is turned over to the corporation at, together with the powers the secretary has of regulating these corporations, and the Federal Trade Commission, whether when these corporations get into trouble with either the natives of China or with the corporations of other nations with whom they are competing over there—whether it is not going to practically make it what they will claim is a moral obligation on the part of this Government to stand back of the acts of these corporations and the securities, and the financing of them; whether it does not tend to intermingle our Government with business in a way that we have never as yet deemed it wise public policy in this country to mix in.

Mr. DODSON. The British do that to-day.

Senator BRANDEGEE. I have no doubt the British do do these things, as it has always been the policy of the British Government in dealing with its colonial peoples in exploiting and developing their foreign trade with semicivilized countries to get identified with their great business enterprises. I do not know but what the Governments themselves over there take stock in some of these very companies; whether this is where we are making a start now on a new line of policy resulting in the management of a limited series of corporations in Asia; whether we want to mix our Government—the Secretary of Commerce as a member of the President's Cabinet—whether we want to mix in the business of these corporations and their management of those questions over in Asia.

I am perfectly willing to say that I have not thought it out clearly and I have heard no word or suggestion or argument on either side of the question, but there it is in the bill.

Mr. DODSON. The way it came up to that point is this: They wanted some dignified, disinterested, broad-minded person to pass on these very extensive powers given here, and wanted to remove it from the controversies and the factional fights locally there.

Senator BRANDEGEE. I perfectly understand what must be their object in inserting into the bill this, but nevertheless you do not answer my question whether it is wise governmental policy to do it and whether it is wise for us to put our Government into this stabilizing and regulating and guiding of these corporations who are going to engage in the trade struggle in Asia.

Mr. DODSON. One answer to that, Senator, might be that we must do something, and we would probably have to go to considerable length to give to this country an opportunity to take part in the great trade of the Orient which is coming, and Great Britain is doing everything to do it, and we are doing nothing for our country.

Senator BRANDEGEE. Of course, that answer proceeds upon the theory that whatever is necessary to do——

Mr. DYER. Proper safeguards.

Senator BRANDEGEE. To get trade away from the other people, our Government ought to do, whether it is wise American governmental policy or not or whether it involves a new departure on our part of not. I appreciate perfectly well perhaps our corporations can not compete with the British and Japanese corporations unles we exempt them from the corporation income tax. Nevertheless, I think it would present quite a question of policy when this commenced to be debated upon the floor of the Senate, whether we are justified in abating the income-tax requirements from these corporations or not.

Senator WALSH of Montana. As a practical proposition in connection with this feature to which Senator Brandegee invites your attention, the Secretary determines the value of this property that goes into the corporation. It is not at all likely that many of these corporations in organizing will take over Chinese properties. Now, the Secretary of Commerce obviously can not determine in any accurate kind of a way the property over in China. I see he is authorized to appoint agents.

Mr. POWELL. He has agents there now, commercial attachés.

Senator WALSH of Montana. And this commercial attaché fixes the value of the property. It does not mean the Secretary of Commerce, but it means some agent out in China.

Mr. DODSON. It contemplates the establishment of regular machinery to do that in a proper business way. Of course, as the Senator suggests, it would be under the sanction of the Secretary of Commerce.

Senator BRANDEGEE. Nevertheless, that does not relieve the situation any.

Senator WALSH of Montana. It simply accentuates the point Senator Brandegee was making. Some of our agents out in China have not done us any great degree of credit, and it is possible that one of these will be passing upon the adequacy of these securities, and he will pass them by, and all the evils you now experience you will experience again. That is, there will be corporations floated over there on watered stock, and, as Senator Brandegee suggests, the Government will in a measure be held responsible.

Mr. DODSON. Well, as to that responsibility, I do not see how you can obviate that any more than when exercised by a governmental function by the other powers, and they do not attach governmental responsibility to their work. It seems to me the Chinese would understand that. The only point of difference the Senator brings up, it goes directly to a Cabinet officer instead of a court. It would have to be exercised by some power if we are going to get away from

these abuses which we are seeking to get relief from, and we are seeking to get it from the highest and most fair-minded power we can.

Senator WALSH of Montana. The point is you are not getting it, because, as indicated, the Secretary himself will not do the work.

Mr. DODSON. Still his representatives, Senator, are absolutely subject to the order of the Secretary.

Senator WALSH of Montana. But you understand that China is some six or eight thousand miles away.

Mr. DODSON. We are trying to strengthen the standing of those emissaries of the American Government over there. We know we must have more business there. It is a territory which belongs to us more in foreign trade than it does to any other nation, and we want to strengthen it. Instead of having the men who failed in the past, we want to strengthen them and build them up until they have a reputation which we hold is in keeping with the reputation of the United States.

Senator BRANDEGEE. Shouldn't they be built up and made competent before being required to exercise this tremendous power?

Mr. DYER. We have, Senator, over there now some very conscientious and able men. I agree from what I saw that there can be improvement made in the Diplomatic and Consular Service in the Orient, but we do have some very extraordinary and good men.

Senator BRANDEGEE. But they are not under the control of the Secretary of Commerce at present.

Mr. DYER. Commercial attachés.

Senator BRANDEGEE. But not under the Secretary of Commerce.

Mr. DODSON. On that subject I might state that the State Department has been consulting with us and has made this suggestion—that they would like to see the ultimate control, which rests in the Commerce Department here, vested in an interdepartmental committee of which the Secretary of the Department of Commerce was chairman. That request was made of us yesterday. I mean, it was put up to us. They said they would not interpose it as an objection to this bill, but they believe it would be better that a board of three, representing, first, the Secretary of the Department of Commerce as chairman, the State Department, and the Federal Trade Commission, constitute a definite appellant board to exercise these very powerful provisions of the law. They said they would look upon that as a better and safer provision. That would not, however, get away from the Senator's objection as to governmental policy.

Senator BRANDEGEE. Or involving the Government.

Mr. DODSON. But I think the practice in the past with the other nations over there——

Senator WALSH of Montana. Another way to do it and a very propery way is to require the stock of the corporation to be paid up in cash in money, and then you do not have to have governmental supervision or governmental adjudication about the value of the property. That is what it ought to be anyway.

Senator BRANDEGEE. What authority is there for giving or for attempting to give to the Secretary of Commerce the power by subpœna issued by him to require the attendance of witnesses and the production of any books or papers or other evidence at any place, any designated place of hearing in China? How can the Secretary of Commerce sit here and issue a subpœna to a Chinaman to go from one place to another in China and compel him to testify on any matter that the Secretary of Commerce wants to have him testify about?

Mr. POWELL. Well, he can not over the Chinese but he can over our own nationals, over our own people.

Mr. DODSON. This is an American company.

Senator BRANDEGEE. "For the efficient administration of the functions vested in the Secretary by this act, he may require, by subpœna issued by him or under his direction, the attendance of any witness and the production of any book, paper, document or other evidence from any place at any designated place of hearing in China."

Mr. DYER. It means only Americans.

Senator BRANDEGEE. It does not say so.

And it says "or if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within 50 miles of the actual residence or place of sojourn of such witness, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or upon his direction and shall then be subscribed to by the deponent."

Now, he can require them to produce any books or papers of any kind in the discretion of the Secretary so long as the Secretary thinks it is in the interest of and for the efficient administration of the functions vested in the Secretary, in the administration of the act.

Chairman CUMMINS. Without any complaint.

Senator BRANDEGEE. Without any complaint at all.

Now, it says, "In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. The Secretary may administer oaths and examine any witness. Any witnesses summoned before the Secretary and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

"In the case of failure to comply with any subpœna or in the case of the contumacy of any witness appearing before the Secretary, he may invoke the aid of any Federal district court."

And then the court orders and commits for contempt, and any failure to obey such order may be punished by such court as a contempt thereof.

Chairman CUMMINS. The general manager of all these corporations?

Mr. DYER. It says the court may punish them.

Senator BRANDEGEE. Yes.

Chairman CUMMINS. I take it that you would not regard that as very essential?

Senator WALSH of Montana. No; but that has to do with determining the value of the property.

Senator BRANDEGEE. How is that?

Senator WALSH of Montana. I think that was in regard to determining the value of the property.

Senator BRANDEGEE. Also to investigate.

Mr. DYER. To investigate complaints.

Chairman CUMMINS. To suspend the corporation because it might be contrary to the best interests of the United States.

Senator BRANDEGEE. You see, under the section you quoted the Secretary may examine the books and orders of the corporation and have the authority to examine the books and papers.

Chairman CUMMINS. Now, is there any other person who appears here?

Mr. DYER. Mr. Beaman is here, and I would like to have him speak, if you gentlemen desire any information with reference to the revenue section, with which we had a great deal to do in preparing.

Senator BRANDEGEE. It seems to me that it is couched in language I can not fully understand, but the effect is to exempt them, isn't it?

Mr. DYER. To a certain extent.

STATEMENT OF MR. MIDDLETON BEAMAN, CHIEF DRAFTSMAN, LEGISLATIVE DRAFTING SERVICE, HOUSE OF REPRESENTATIVES.

Mr. BEAMAN. The effect of this is to exempt a corporation organized under this act from all income and excess-profit taxes, provided they make proper returns to the Commissioner of Internal Revenue, but if, and only if, they declared dividends during the taxable year up to one-third of their net income——

Senator WALSH of Montana. I do not understand that at all.

Mr. BEAMAN. Under the law stockholders are subject to tax on their dividends if the corporation itself is not taxable. If the corporation is taxable, the individual stockholder is exempt from tax for the purpose of the normal tax. Now, here is the China Trade Corporation, of which at least 51 per cent must be American owned. The corporation income itself is exempt from the income and excess-profits taxes, but the dividends, when distributed into the hands of American stockholders, are subject to tax; and this provides that the corporation itself does not get the exemption unless at least one-third of its net income is paid out in dividends. Of course, if more is paid out it would be taxed in the hands of the stockholders, but this is to assure that one-third of the net income will be distributed in dividends.

Senator BRANDEGEE. That is, the corporation is entirely exempt?

Mr. BEAMAN. Except in the further case that if it derives as much as 5 per cent or more of its gross income from sources within the United States, then it loses its exemption entirely.

Senator BRANDEGEE. But, inasmuch as its entire business is to be transacted in China, its whole income would be derived there.

Mr. BEAMAN. Of course, that was put in to cover the cases where it is provided on page 3 of the bill, the corporation "may do in the United States" any act which is approved by the Secretary as necessary to a business it is authorized to engage in.

The 5 per cent provision is simply to protect the Government against the evasion of our tax laws by the corporation under the act.

Another condition of the exemption is that the Secretary of Commerce certifies to the commissioner that during the year the corporation has complied with all the provisions of the act. The rest of the amendments are simply formal amendments to the revenue act made necessary by that first exemption.

Chairman CUMMINS. Don't you think that is a rather dangerous precedent to establish, Mr. Dyer? Suppose that in order to compete in Great Britain, in Germany, in France, in Russia, or anywhere else where we might be doing business or where our people might be doing business, it was founnd necessary to reduce everybody to even terms; that we took off the tax of the American company or the American individual. That would be rather a serious innovation of our tax law.

Mr. DYER. That does not apply except to China.

Chairman CUMMINS. Great Britain has done that in China, you say?

Mr. DYER. Yes, sir.

Chairman CUMMINS. And we have to meet them?

Mr. DYER. Yes, sir.

Chairman CUMMINS. Now, suppose Great Britain would do it in Germany and would do it in Russia, and would do it everywhere else in order to sell her goods; we could not follow here in that respect, could we?

Mr. DYER. The Treasury Department, as I understand it from what they told us when we were before them, favor a policy and favor general legislation which they are submitting to the Committee on Ways and Means as to an exemption to corporations generally with reference to its foreign trade.

Chairman CUMMINS. So our taxes are heavier than Great Britain? We can not consider exempting our corporations from our taxes in order to meet the taxing policy of Great Britain.

Senator BRANDEGEE. Even if they do exempt the corporations from income taxes on that foreign trade, on that trade between this country and other countries, that would not set a precedent, it seems to me, nor a parallel to the proposition to exempt these companies in the Chinese trade.

Mr. DYER. This is only to meet a condition which exists in China and on which there is the greatest opportunity of the nations for foreign trade. In other words, America must have foreign trade. Of course, we all realize that, and the opportunities at other places are very small as compared to what they are in China. China is a very vast country and has vast resources and is almost untouched and unlimited, and she is beginning to develop and we are getting our lines of shipping out there now. Never before have we had shipping on the Pacific that we have now, and it is going forward very rapidly, and we must meet those conditions. If American merchants and American manufacturers are to participate in that trade we must meet those conditions.

Senator BRANDEGEE. It is just an argument of necessity.

Mr. DYER. That is what it is.

Senator BRANDEGEE. Let me ask you this for the purpose of clarifying my own mind about it. I do not pretend to be an expert on these commercial questions. I submit, of course, it is a good thing to promote our foreign trade; but if we exempt the companies to be created under this act from the income tax, thereby possibly increasing the amount of return on the capital invested and the amount of dividends, perhaps, 2 or 3 per cent, or at any rate, the possibility of increasing them by the amount of the income tax remitted, whatever it may be, it makes a great inducement or it creates a bonus to invest in that particular class of securities, which these corporations are to issue, doesn't it—that is, it is for an investor an opportunity to invest in a security here which will pay him 3 per cent; or to invest in a security, issued by one of these corporations, which would pay him 6 per cent? Would it not have a great tendency to draw capital out of this country to be invested in these corporations located in China for the purpose of developing China and not developing the United States?

Mr. DYER. I do not think so, Senator. The conditions out there are not inviting to American capital at the best. They have good business there for a part of the year, for instance, and then, for many months there is nothing doing practically, and to tide these things over it requires a great deal of capital, and during the business troubles, which have been everywhere, Americans out there have lost a great deal of money and it is very discouraging.

Senator BRANDEGEE. Now, in my reading of the report and the hearings in this case before your House committee, there is a reference there to the favorable effect that this will have upon the financial profits of the great bankers and other financial interests who have got to finance these corporations when they are formed. Now, I am trying to picture how this thing will look when this great country, which you have described with its infinite possibilities, is put at the disposition of these corporations there for them to prosecute their business for the development of that great country, all sorts of contracts, and these great financial interests backing them. Would it not be natural for these banking interests, in the attempt to dispose of securities which they are financing, to paint in glowing colors to their customers the fact that they were exempt from the income tax, and hence were a very desirable security, and to advise them to invest in them rather, for instance, than in railroad securities in this country? Wouldn't that be featured as a very prominent thing to the investor?

Mr. BEAMAN. That would be true; but, as I tried to point out a moment ago, the dividends paid out to the stockholders are taxable, and not only in normal taxes but surtaxes.

Senator BRANDEGEE. It would give the security no preference?

Mr. BEAMAN. No; no preference. The only object, as I understand it, is to get the Chinamen to put their money in, because the corporation is exempt, and the dividends in his hands would not be subject to our taxes, but the American stockholder would have to pay full taxes on those dividends, where now he does not pay any normal tax on them at all.

Mr. POWELL. When those are brought back to the United States ultimately they must be taxed.

Senator BRANDEGEE. Of course, if they are brought back here and not reinvested over there.

Mr. DYER. They have to pay them if they stay over there.

Mr. DODSON. Another thing: The extent of the possible investment depends upon making a profit. Capital is not going to seek that country unless they make a fair profit.

Senator BRANDEGEE. Of course not.

Mr. DODSON. If they make a profit on the line of business we believe is sure to develop under this law, they are going to make a market for our goods, a market for the manufacturer who produces the goods, the manufacturer who produces the machinery to go over there, and they are going to pay taxes. If we are correct in our hypothesis, the American will sell our goods there. If we do not enact such a bill, other nationals will sell their goods. If we do not create conditions to get in right, we are not going to get any appreciable taxes on the manufactured products of this country going over to China. The business will go anyway to another country, and we will not get to sell it, and the manufacturer from this country will not produce it. In other words, we are going to get the business of supplying the machinery and supplying the goods and keeping the machinery in shape and extending the business and selling a large part of the materials when it is there if we can get the Chinese with us.

May I touch on another point for only a moment? I just want to suggest the history of the situation. The British opened the trade with the Orient through the East India Co., etc. They had a monopoly with those companies. Later on the Yankees came in there. Without the restriction and limitations imposed by British monopolies they went in and opened such Yankee firms as Russell & Co., Frazar & Co., Forbes & Co., etc. They had the trade up to the sixties, but during the war our ships taking the trade out there were swept from the seas by privateers, and some of these privateers were given aid and comfort by the British.

Senator BRANDEGEE. You mean the Civil War?

Mr. DODSON. Yes, sir; I mean the Civil War. Now, for the next 5, 10, or 15 years our American firms who had the China trade were absolutely effaced from the field because we did not have the ships to supply them, and we did not back them up. Then the Britisher changed his system, seeing that he could not conduct the business through the monopolies. He opened the door to his trade generally. We had but a small share of it when the World War came. Then our people rushed over there in large numbers and said: "Here is our opportunity. We are building ships and will have those ships available to take our commerce to the Orient, and we will put our business back there." But when our people got in there again they found that we were up against a fact that

the Britisher, profiting by his experience when he tried to protect a monopoly, had created conditions and passed laws that were favorable to British trade, and our people are up against that now. So we now ask for laws to meet the British competition.

We got a cablegram the other day stating that the Shanghai branch of the Philippine National Bank failed to the extent of about $8,000,000 or 8,000,000 taels. I don't know whether it was dollars or taels. Many American firms are going under rapidly. Our American companies will have to refinance with joint Chinese investments. Nothing else in the world will enable us to hold a large part of the trade. We will get some of that trade sure. We are going to get a part of it, anyhow. Part of our products will sell in any market, but to go in there and take a large part of it—and it belongs to us as much as to anyone else, except possibly Japan, because of her proximity—we have got to have some such provision as this. I am sure you can get by the difficulties of the form of the law. You unquestionably must appreciate that we should be able to meet competition in that country in some way or other and get back our share of the trade.

Now, there is an economic aspect of it. This Government aided a consortium. The administration thought it an exceedingly important thing. The consortium will never take in a fraction of the money that would come in under such a law as is intended here, for the reason there are too many political difficulties, etc.

This law would take American capital and American business men and American industry into China in large measure and regain for us what we have lost to other people. All we are asking is just an opportunity to meet those fellows over there on something like a fair competitive basis, and we believe you people are just as deeply interested as we are.

Senator BRANDEGEE. As to foreign trade, of course, we want to do that, but whether we want to put the Government into it, as this bill does through the Secretary of Commerce, is a different proposition.

Mr. POWELL. Along that line the United States must take the moral responsibility for the things that are going on out there. If a Delaware company or an Iowa company or a Wisconsin company goes out there and does things not on the square and fails and sticks the Chinese, we can not escape that responsibility.

Senator BRANDEGEE. These are not legal claims against the Government; nothing has been paid out of our Treasury on account of this responsibility.

Mr. POWELL. No claim has been made.

Senator BRANDEGEE. Are you talking of the responsibility moral or legal?

Mr. POWELL. Moral. Why not put the business on a high plane and take the responsibility?

Senator BRANDEGEE. It depends upon whether you want to put the Government into the business in order to get it on the high plane.

Senator WALSH. I guess that is all we can get from these gentlemen.

Chairman CUMMINS. I think we have your views pretty well now, and we will consider the matter.

Mr. DYER. We will be very glad to have you gentlemen offer any amendments that will make it more safeguarded.

(Whereupon, at 5.45 o'clock p. m., the committee adjourned.)

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